FOREWORD

This volume contains the Acts of the First Regular Session and the First Extraordinary Session of the 64th Legislature.

Regular Session, 1979

The first regular session of the 64th Legislature convened on January 10, 1979, and, following the certification of the election of members, held at the general election on the 7th day of November, 1979, the election of officers of the two houses, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on matters incident to organization, proceeded to the business of the session.

Bills totaling 1,408 were introduced in the two houses during the session (842 House and 566 Senate). The Legislature passed 124 bills, 68 House and 56 Senate. The Governor approved 122 bills and vetoed two (S. B. 280 and S. B. 371).

There were 86 Concurrent Resolutions introduced during the session, 52 House and 34 Senate, of which nine house and five Senate were adopted by both houses. A total of 55 Joint Resolutions were introduced proposing amendments to the Constitution of the State, 37 House and 18 Senate, of which none were adopted. The House had 36 House Resolutions and the Senate, 18 Senate Resolutions, of which 22 House and 13 Senate were adopted by their respective houses.

Sixty House Bills failed passage by the Senate and 46 Senate Bills failed passage by the House. Seven bills died in conference, five House and two Senate.

The Constitutional expiration date of the Session was midnight, March 10, 1979. However, the Session was extended by Proclamation of the Governor for consideration of the annual Budget Bill, up to and including March 13, 1979. The Legislature failed to pass the Budget and adjourned sine die on Monday, March 12, 1979.

First Extraordinary Session, 1979

The first extraordinary session of the 64th Legislature was convened by the Governor on April 9, 1979, for the sole purpose of

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consideration of the annual Budget and supplemental appropriation bills. Following passage of the Budget Bill (H. B. 101), *sine die* adjournment was taken on April 11, 1979.

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 25305.

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

Speaker—Clyde M. See, Jr., Moorefield
Speaker Pro Tem—Clarence C. Christian, Jr., Princeton
Clerk—C. A. Blankenship, Pineville
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

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*Appointed January 17, 1979, to fill the vacancy created by the resignation of the Honorable Ted T. Stacy.

(D) Democrats ........................................ 74
(R) Republicans ...................................... 26

Total ...................................................... 100
MEMBERS OF THE SENATE

REGULAR SESSION, 1979

OFFICERS

President—W. T. Brotherton, Jr., Charleston
President Pro Temp—Carl E. Gainer, Richwood
Clerk—J. C. Dillon, Jr., Hinton
Sergeant at Arms—John E. Howell, Charleston
Doorkeeper—E. L. Bevins, Williamson

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<td>Si Galperin, Jr. (D)</td>
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* Elected in 1976. All others elected in 1978.

(D) Democrats .......................................... 26
(R) Republicans ............................................. 8
Total ................................................................... 34
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1979

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Milleson (Vice Chairman of Agriculture), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman of Natural Resources), Arnold, Brenda, Brown, Bryan, Damron, Fry, Goodwin, Harden, Hendricks, Reed (23rd Dist.), Richey, Shiflet, Smith, Underwood, Whitlow, Atkinson, Clark, Rubin, Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Tomblín (Vice Chairman of Banking), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman of Insurance), Anello, Bryan, Hartman, Holmes, Milleson, Moler, Schifano, Scott, Shiflet, Singleton, Shumate, Toney, Tucker, Ward, Wright, Greer, Kopelman, McCuskey, Reed (10th Dist.), Shaffer and Warner.

Constitutional Revision

Wehrle (Chairman), Wooton (Vice Chairman), Ballouz, Caudle, Chambers, Dalton, Farley, Fox. Ketchum, Knight, Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Shuman, Spears, Stephens, Tucker, Wright, Harman, Kopelman, McCuskey, Reed (10th Dist.), Warner and White.

Education

Sattes (Chairman), Richey (Vice Chairman), Ballouz, Barley, Blackwell, Burdette, Dalton, Fox, Fry, Givens, Goodwin, Hartman, Ketchum, Kidd, Moler, Shumate, Underwood, Worden, Yanni, Atkinson, Clark, Dober, Prunty, Springston and Warner.

Finance

Polan (Chairman), Farley (Vice Chairman), Anello, Brenda, Brown, Harden, Holmes, Karras, Lewis, Mathis, Milleson, Neal, Reed (23rd Dist.), Spears, Tomblín, Toney, Van Meter, Wehrle, Wright, Harman, Kopelman, McCuskey, Otte, Swann and Wells.

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Government Organization

Shuman (Chairman), Whitlow (Vice Chairman), Burdette, Crabtree, Fox, Fry, Gvoyich, Hendricks, Holt, Knight, Moler, O'Neal, Presley, Schifano, Shumate, Vincent, Wiedebusch, Worden, Biddle, McKenzie, Price, Reed (10th Dist.), Richards, Rubin and Wedge.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Arnold, Ballouz, Caudle, Crookshanks, Gvoyich, Harden, Hartman, Knight, Lewis, Moler, Richey, Smith, Spears, Tomblin, Ward, Wehrle, Worden, Harman, Lane, Louden, McKenzie, Otte and Price.

Industry and Labor

Wiedebusch (Chairman), Hendricks (Vice Chairman), Blackwell, Caudle, Christian, Damron, Gilliam, Gvoyich, Holmes, Holt, Kidd, Knight, O'Neal, Presley, Riffle, Starcher, Underwood, Whitlow, Yanni, Atkinson, Biddle, Carmichael, Greer, Prunty and Richards.

Interstate Cooperation

Bryan (Chairman), Brenda, Christian, Gilliam, Scott, Harman and Swann.

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Bryan, Caudle, Chambers, Christian, Crookshanks, Damron, Gilliam, Martin (30th Dist.), Martin (35th Dist.), Riffle, Scott, Shepherd, Singleton, Starcher, Stephens, Ward, Wooton, Carmichael, Greer, Lane, Louden, Shaffer and White.

Political Subdivisions

Toney (Chairman), Yanni (Vice Chairman), Anello, Brown, Burdette, Fox, Fry, Hendricks, Ketchum, Lewis, Mathis, Richey, Shepherd, Shuman, Stephens, Van Meter, Vincent, Wiedebusch, Wooton, Biddle, Dober, Lane, Richards, Wells and White.

Roads and Transportation

Goodwin (Chairman), Gvoyich (Vice Chairman), Arnold, Barley, Blackwell, Chambers, Christian, Crabtree, Crookshanks, Dalton, Givens, Harden, Holt, Presley, Shumate, Smith, Starcher, Tomblin, Vincent, McKenzie, Price, Prunty, Rubin, Swann and Wedge.
HOUSE COMMITTEES

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

State and Federal Affairs
Scott (Chairman), Van Meter (Vice Chairman), Barley, Chambers, Crabtree, Dalton, Farley, Fry, Givens, Karras, Kidd, Martin (30th Dist.), O'Neal, Reed (23rd Dist.), Riffle, Shuman, Stephens, Underwood, Whitlow, Carmichael, Clark, Dober, Louden, Springston and Wedge.

JOINT COMMITTEES

Enrolled Bills
Christian (Chairman), Holmes (Vice Chairman), Spears, Otte, and Wells.

Government and Finance
See (Chairman), Albright, Polan, Shiflet, Tompkins, Greer and Teets.

Joint Rules
See (Ex Officio Chairman), Tompkins and Teets.

Legislative Rule-Making
Review Committee
Singleton (Chairman), Bryan, Shiflet, Wiedebusch, Shaffer and Teets. (Speaker is ex officio nonvoting member).

PURCHASING PRACTICES AND PROCEDURES
COMMISSION
See (Chairman), Sattes, Harman and Teets.
STANDING COMMITTEES OF THE SENATE

1979

Agriculture

Williams (Chairman), Oates (Vice Chairman), Baylor, Benson, Hamilton, Hanlon, McGraw, Steptoe, Susman, Jones and Shaw.

Banking and Insurance

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

Confirmations

Benson (Chairman), Galperin (Vice Chairman), Colombo, Davis, Hamilton, McGraw, Oates, Rogers, Tonkovich, Williams, Gilligan, Herndon and Kusic.

Education

Nelson (Chairman), Oates (Vice Chairman), Boettner, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Sharpe, Steptoe, Deem, Gilligan, Herndon and Jones.

Elections

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

Energy, Industry and Mining

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

Finance

Fanning (Chairman), Susman (Vice Chairman), Boettner, Colombo, Gainer, Grubb, Hanlon, McGraw, Oates, Rollins, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman, Herndon and Hinkle.

Health

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

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SENATE COMMITTEES

Interstate Cooperation

Gainer (Chairman), Moreland (Vice Chairman), Davis, Huffman, Nelson, Oates and Hinkle.

Judiciary

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

Labor

Davis (Chairman), Hamilton (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Tonkovich, Deem and Kusic.

Local Government

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

Military

Moreland (Chairman), McGraw (Vice Chairman), Baylor, Boettner, Colombo, Ward, Williams, Harman and Hinkle.

Natural Resources

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

Public Institutions

Sharpe (Chairman), Rollins (Vice Chairman), Colombo, Davis, Hamilton, Hanlon, Nelson, Oates, Tonkovich, Hinkle and Shaw.

Rules

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

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Colombo, Gainer, Hamilton, Hanlon, Huffman, McGraw, Nelson, Palumbo, Sharpe, Tonkovich, Williams, Deem, Jones, Kusic and Shaw.
SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills
Davis (Chairman), Baylor, Rogers, Hinkle and Jones.

Government and Finance
Brotherton (Chairman ex officio), Fanning, Palumbo, Sharpe, Ward, Gilligan and Harman.

Joint Rules
Brotherton (Chairman ex officio), Ward and Harman.

Legislative Rule-Making Review Committee
Steptoe (Chairman), Moreland, Rogers, Rollins, Herndon and Hinkle.

PURCHASING PRACTICES AND PROCEDURES COMMISSION
Brotherton (Chairman), McGraw, Nelson, Gilligan and Jones.
AN ACT to amend article eleven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to limitations on constructive notice to any pendente lite purchaser or encumbrancer of real estate upon the filing for recordation of a memorandum or notice of a suit, action, attachment or other proceeding affecting such real estate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. LIS PENDENS.

§55-11-3. Limitations on notice of lis pendens.

Constructive notice of the pendency of a suit, action, attachment or other proceeding, arising from the filing for recordation of a notice or memorandum in accordance with the provisions of section two of this article, shall continue to operate as constructive notice thereof to any pendente lite purchaser
or encumbrancer of the real estate affected, for a period of ten years next after the date when such notice was filed for recordation. Where constructive notice arises as aforesaid, that notice may be renewed or extended for additional ten year periods by the filing for recordation, as provided in section two of this article, a similar memorandum or notice of lis pendens within ten years from the date of recordation of the last such memorandum or notice.

CHAPTER 2
(Com. Sub. for S. B. 518—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and eight, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to bringing the West Virginia air pollution control law into accord with the federal clean air act, as amended; making it unlawful to violate this article or rules and regulations promulgated thereunder; prohibiting any person from knowingly misrepresenting to any person in the state of West Virginia that the sale of air pollution control equipment will meet standards; providing for the election of a vice chairman and specifying his duties; requiring that no rule or regulation of the commission shall specify the manufacturer, type of construction, or particular method of compliance except as specifically required by the federal clean air act, as amended, or apply to any aspect employer-employee relationship; providing that the state rules and regulations may not be more stringent than those of the federal government; and requiring that a copy of proposed rules or regulations be filed in the office of the secretary of state sixty days prior to hearing.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and eight, article
twenty, 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 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.

§16-20-2. Definitions.

§16-20-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

§16-20-4. Air pollution control commission—Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

§16-20-1. Declaration of policy and purpose.

1 It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

10 To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

17 Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the "Federal Clean Air Act," as amended.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 The term "person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal,
statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

The term "commission" means the air pollution control commission, and the term "commissioner" shall mean a member of said commission.

The term "air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

The term "discharge" refers to the release, escape or emission of air pollutants into the air.

The term "statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

The term "director" means the director of the West Virginia air pollution control commission appointed as hereinafter provided.

§16-20-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

It shall be unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules or regulations promulgated pursuant to this article, to operate any facility subject to the permit requirements of the commission without a valid permit, or to knowingly misrepresent to any person in the state of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules and regulations promulgated thereto: Provided, however, That nothing contained in this article shall be construed to provide any person with a legal remedy or basis for damages or other relief
13 not otherwise available to such person immediately prior
14 to enactment of this article.

§16-20-4. Air pollution control commission—Composition; ap­
1 pointment and terms of members; vacancies; com­
2 pensation and expenses of members; organization
3 and personnel; appointment of director; records;
4 meetings.

1 The "air pollution control commission," heretofore
2 created, shall continue in existence as an agency of the
3 state but on and after the effective date of this act
4 shall consist of seven members, including the state direc­
5 tor of health and the commissioner of agriculture, who
6 shall be members ex officio, and five other members to be
7 appointed by the governor with the advice and consent
8 of the Senate, two of whom shall be representative of
9 industries engaged in business in this state, and three
10 of whom shall be representative of the public at large.
11 The three appointed members of the commission in
12 office on the effective date of this act shall, unless
13 sooner removed, continue to serve until their terms expire
14 and until their successors have been appointed and
15 have qualified. On or before June fifteen, one thousand
16 nine hundred sixty-seven, the governor shall appoint one
17 member to serve until June thirty, one thousand nine
18 hundred seventy, and one member to serve until June
19 thirty, one thousand nine hundred seventy-one, or until
20 their successors have been appointed and have qualified.
21 As the terms of the three appointed members of the
22 commission in office on the effective date of this act
23 expire and as the terms of the two members to be ap­
24 pointed by the governor on or before June fifteen, one
25 thousand nine hundred sixty-seven, expire, members
26 shall be appointed for overlapping terms of five years,
27 so that one term expires each year, or until their suc­
28 cessors have been appointed and have qualified. Any
29 vacancy in the office of an appointed member of the
30 commission shall be filled by appointment by the gov­
31 ernor for the unexpired term of the appointed member
32 whose office shall be vacant.
The ex officio members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purpose, for all reasonable and necessary expenses actually incurred in the discharge of their duties as such.

As compensation for his services on the commission, each appointed member shall receive, out of moneys appropriated for such purpose, the sum of fifty dollars for each day or substantial portion thereof that he is actually engaged in the work of the commission. Each member shall also be entitled to be reimbursed, out of moneys appropriated for such purpose, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the commission.

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall elect from its membership a vice chairman and appoint a secretary. The secretary need not be a member of the commission. The vice chairman shall preside over the meetings and hearings of the commission in the absence of the chairman. The commission shall appoint and employ a director and such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it, or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such
times and places as may be agreed upon by the commis-

sioners, or upon the call of the chairman of the commis-

sion or any two commissioners, all of which meetings
shall be general meetings for the consideration of any
and all matters which may properly come before the
commission.

§16-20-5. Same—Powers and duties; legal services; rules and
regulations; public hearings.

The commission is hereby authorized and empowered:

(1) To develop ways and means for the regulation and
control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agen-
cies of the state, political subdivisions of the state, other
states, agencies of the federal government, industries,
and with affected groups in furtherance of the declared
purposes of this article;

(3) To encourage and conduct such studies and re-
search relating to air pollution and its control and abate-
ment as the commission may deem advisable and neces-
sary;

(4) To adopt and to promulgate reasonable rules and
regulations, not inconsistent with the provisions of this
article, relating to the control of air pollution: Provided,
That no rule or regulation of the commission shall specify
a particular manufacturer of equipment nor a single
specific type of construction nor a particular method of
compliance except as specifically required by the "Federal
Clean Air Act," as amended, nor shall any such rule or
regulation apply to any aspect of an employer-employee
relationship: Provided further, That no rule, regulation,
standard, program or plan of the commission to control
air pollution from any source hereafter promulgated,
adopted or implemented, may be more stringent than any
federal rule, regulation, standard, program or plan appli-
cable to the control of air pollution from that source;

(5) To enter orders requiring compliance with the pro-
visions of this article and the rules and regulations law-
fully promulgated hereunder;
(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, however, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so ap-
68 pointed shall consist of not more than five members ap-
69 pointed from the general public, for each area so desig-
70 nated. Such members shall possess some knowledge and
71 interest in matters pertaining to the regulation, control
72 and abatement of air pollution. The council may advise
73 and consult with the commission about all matters per-
74 taining to the regulation, control and abatement of air
75 pollution within such area;
76 (14) To require any and all persons who are directly
77 or indirectly discharging air pollutants into the air to
78 file with the commission such information as the director
79 may require in a form or manner prescribed by him for
80 such purpose, including, but not limited to, location, size
81 and height of discharge outlets, processes employed, fuels
82 used and the nature and time periods of duration of
83 discharges. Such information shall be filed with the di-
84 rector, when and in such reasonable time, and in such
85 manner as the director may prescribe;
86 (15) To require the owner or operator of any station-
87 ary source discharging air pollutants to install such mon-
88 itoring equipment or devices as the director may pre-
89 scribe and to submit periodic reports on the nature and
90 amount of such discharges to the commission;
91 (16) To do all things necessary and convenient to pre-
92 pare and submit a plan or plans for the implementation,
93 maintenance and enforcement of the "Federal Clean Air
94 Act," as amended: Provided, That in preparing and sub-
95 mitting each such plan the commission shall establish in
96 such plan that such standard shall be first achieved, main-
97 tained and enforced by limiting and controlling emissions
98 of pollutants from commercial and industrial sources and
99 locations and shall only provide in such plans for limiting
100 and controlling emissions of pollutants from private
101 dwellings and the curtilage thereof as a last resort:
102 Provided further, That nothing herein contained shall be
103 construed to affect plans for achievement, maintenance
104 and enforcement of motor vehicle emission standards and
105 of standards for fuels used in dwellings; and
106 (17) Whenever the commission achieves informally,
by letter, or otherwise, an agreement with any person that said person will cease and desist in any act resulting in the discharge of pollutants or do any act to reduce or eliminate such discharge, such agreement shall be embodied in a consent order and entered as, and shall have the same effect as, an order entered after a hearing as provided in section six of this article.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule and regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be in at least one county in each affected air quality control region defined by the commission. A copy of any proposed rule or regulation of the commission shall be filed in the office of the secretary of state at least sixty days prior to the scheduled date of any such hearing. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule and regulation to the commission within thirty days after such hearing. After such thirty-day period, no views or comments shall be received in writing or otherwise, unless formally solicited by the commission. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party in
146 which event the prevailing rates for such transcripts will
147 be required from such interested party.

§16-20-8. Penalties; recovery and disposition; duties of prose-
cut ing attorneys.

1 Any person who shall fail or refuse to comply with any
2 final order made and entered hereunder to correct a statu-
tory air pollution within the time fixed by such order, or
3 any extension of time granted by the commission, shall
4 be subject to a penalty of not more than one thousand
5 dollars for each day that such failure or refusal continues
6 after such time has expired, which penalty may be re-
7 covered in a civil action brought by the commission in the
8 name of the state of West Virginia in the circuit court of
9 any county wherein such person resides or is engaged in
10 the activity complained of. The amount of the penalty
11 shall be fixed by the court without a jury. The amount of
12 any such penalties collected by the commission shall be
13 deposited in the general fund of the state treasury ac-
14 cording to law. Upon a request in writing from the com-
15 mission, it shall be the duty of the prosecuting attorney of
16 the county in which any such action for penalties accruing
17 under this section may be brought to institute and pros-
18 ecute all such actions on behalf of the commission.

19 For the purpose of this section, violations on separate
20 days shall be considered separate offenses.

CHAPTER 3
(S. B. 132—By Mr. Gainer and Mr. Rollins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-g, chapter twenty-nine of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to the interstate compact on air pollution.
Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to interstate compact on air pollution.

1 Article one-g, chapter twenty-nine of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

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CHAPTER 4
(H. B. 1067—By Mr. Givens)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter
seven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to providing a more specific
definition of cruelty to animals; elimination of the lien for care
and provision for such animals.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, 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 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or
cruelly treated; provisions not applicable to farm live-
stock or poultry.

1 Such officers shall take charge of any animal found
2 abandoned, neglected, or cruelly, unnecessarily or needlessly
3 beaten, tortured, tormented, mutilated or overloaded, over-
4 driven or willfully deprived of necessary sustenance or ade-
5 quate shelter, and shall thereupon give notice thereof to the
6 owner, if known, and shall care and provide for such animal
7 until the owner shall take charge of the same: Provided, That
8 if it shall appear to such officers that the owner has willfully
9 abandoned, neglected or cruelly, unnecessarily or needlessly
beaten, tortured, tormented, mutilated or overloaded, over-
driven or willfully deprived of necessary sustenance or ade-
quate shelter such animal, the animal shall not be returned
to him until he has been acquitted of the charge, or, if
convicted thereof, until he has given bond as provided in the
last preceding section, and not then until he has fully paid
all charges for the care and provisions for such animal during
the time it shall have been in the possession of such humane
officer.

This section shall not apply to farm livestock or poultry
which are kept and maintained by usual and accepted standards
of livestock or poultry production upon a farm.

CHAPTER 5
(H. B. 1168—By Mr. Polan)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out
of the treasury from the balance of all General Revenue
remaining unappropriated for the fiscal year ending June
thirtieth, one thousand nine hundred seventy-nine, to the
West Virginia Board of Regents (Control), Account No. 279,
supplementing chapter four, acts of the Legislature, regular
session, one thousand nine hundred seventy-eight, known as
the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Execu-
tive Budget Document, dated January 10, 1979, 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 1978-79, 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. 279, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill" be supplemented by adding the following sums to the designated line items:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

   EDUCATIONAL

3 26—West Virginia Board of Regents (Control)

   Acct. No. 279

   1 Personal Services ........................................ $3,603,000
   2 Current Expenses ........................................ 2,693,000
   4 Equipment .................................................. 20,000

   Total .......................................................... $6,316,000.

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1978-79. Such amounts shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 6

(Com. Sub. for S. B. 474—By Mr. Brotherton, Mr. President)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the Department of Public Safety, Account No. 570, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."
WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 1979, 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 1978-79, 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. 570, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1 PROTECTION
2 100—Department of Public Safety
3 Acct. No. 570
4 1 Personal Services ........................................... $200,000.00
5 2 Current Expenses ........................................... $320,000.00

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1978-79. Such amounts shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 7
(H. B. 1499—By Mr. Polan)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]
Department of Welfare, Account No. 405, supplementing chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 1979, 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 1978-79, 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. 405, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill” be supplemented by adding the following sum to the designated line item:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND WELFARE

4 62—Department of Welfare

5 Acct. No. 405

6 8 Direct Medical Services $2,500,000

7 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year of 1978-79. Such amounts shall be available for expenditure immediately upon the effective date of the bill.
AN ACT supplementing, amending and transferring amounts between line items in the appropriation for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the State Health Department, Account No. 400, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill.”

WHEREAS, Continued efficient and effective operation of the Alcohol and Drug Abuse Program of the State Health Department requires the transfer of funds between line items; therefore

Be it enacted by the Legislature of West Virginia:

That items of the appropriation of Account No. 400, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, be supplemented, amended and transferred to read as follows:

1 58—State Health Department

2 Acct. No. 400

3 Alcoholism and Drug Abuse

4 9 Personal Services $446,462
5 10 Current Expenses 134,679

6 The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-nine, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill,” be supplemented, amended and transferred to read as follows:

### TITLE II. APPROPRIATIONS.

#### Section 2. Appropriations from other funds.

<table>
<thead>
<tr>
<th></th>
<th>Maintenance Expressway, Trunkline and Feeder</th>
<th>$ 69,000,000</th>
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<tr>
<td>8</td>
<td>Maintenance State Local Services</td>
<td>85,000,000</td>
</tr>
<tr>
<td>9</td>
<td>Inventory Revolving</td>
<td>2,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Equipment Revolving</td>
<td>8,000,000</td>
</tr>
<tr>
<td>11</td>
<td>General Operations</td>
<td>16,000,000</td>
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<tr>
<td>12</td>
<td>Debt Service</td>
<td>78,000,000</td>
</tr>
<tr>
<td>13</td>
<td>Interstate Construction</td>
<td>98,823,000</td>
</tr>
<tr>
<td>14</td>
<td>Other Federal Aid Programs</td>
<td>88,753,000</td>
</tr>
</tbody>
</table>
The purpose of this bill is to supplement, amend and transfer certain moneys from items of the existing appropriations to other items of such appropriations for the designated spending unit, and to reflect the total spending authority of the spending unit for the 1978-79 fiscal year, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such fiscal year shall be available for expenditure upon the effective date of this bill.

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Industrial School for Boys, Account No. 370, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 370, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 CORRECTION
4 51—West Virginia Industrial School for Boys
5 Acct. No. 370
6 1 Personal Services ........................................ $ 920,201
7 2 Current Expenses ........................................ 330,073
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-nine, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 11
(Com. Sub. for H. B. 1443—By Mr. Farley and Mr. Shaffer)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTION

4 56—West Virginia Penitentiary

5 Acct. No. 375

6 1 Personal Services ................................ $ 2,420,162

7 2 Current Expenses .................................... 1,391,875
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-nine, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 12
(Com. Sub. for H. B. 1153—By Mr. Tompkins)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and eleven, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing bond issuers to withdraw additional funds which, although not earmarked for the purpose of amortizing bonded indebtedness, were deposited with the municipal bond commission to meet their debt obligations, provided that such withdrawal does not create a deficit in issuer’s account, and provided that such withdrawals relate to funds remitted to or deposited with the municipal bond commission on or after January one, one thousand nine hundred seventy-four.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

(a) Deposit of funds.—All interest and other funds on hand
July first of each year and belonging to the counties, municipalities or school districts and earmarked for the purpose of amortizing bonded indebtedness, shall be, by the treasurer or collector thereof, not later than the following September, forwarded to the commission to be deposited in the state treasury to the credit of the state.

(b) Insufficient deposit.—Whenever the amount deposited for any issuer is not sufficient to meet the interest or principal due, it shall be the duty of the treasurer or collector of such issuer, upon being notified of the fact by the commission, to immediately remit all funds in his possession that have been earmarked by the issuer for the purpose of amortizing bonded indebtedness plus such additional funds as are necessary to meet the interest or principal due.

(c) Withdrawal of additional funds.—If an issuer has remitted to the commission funds not earmarked for the purpose of amortizing bonded indebtedness, all or a portion of such funds may be withdrawn by the issuer upon sixty days written notice to the commission: Provided, That such withdrawal shall neither create a deficit in the issuer’s account with the commission nor be in conflict with terms of the bond issue: Provided, however, That such funds were remitted or deposited with the commission on or after January one, one thousand nine hundred seventy-four.

(d) Payment of taxes.—Any taxes to provide for the payment of principal, creation of a reserve or sinking fund, or for the payment of interest on bonds by any county, municipality or school district which shall be collected by any state officer, shall be paid by such officer to the commission to be at once applied to the payment of the debt of the county, municipality or school district and the fact of such application of such fund shall be reported by the auditor to the treasurer or collector of such issuer, which report shall be a receipt for the amount therein named.

(e) Municipal bond commission fund.—The state auditor and the state treasurer shall carry an account to be known as the municipal bond commission fund. All deposits shall be carried as a part of such fund.
§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

The commission shall, annually, at least thirty days before the time for making up the estimate for levy purposes, render to each political subdivision having outstanding general obligation bonds, a statement showing the levy required to pay the interest on and provide for the retirement of the subdivision's outstanding general obligation bonds.

In determining the levy required, the commission shall be governed by the terms of article one, section thirty-four of this chapter or article one, section thirty-five of this chapter. For the purposes of this section, the amount of any moneys, not earmarked for amortizing bonded indebtedness, but which was forwarded by the issuer to the commission for the purpose of meeting principal and interest due under section nine of this article, shall be considered a deficiency for a prior year.

CHAPTER 13
(S. B. 317—By Mr. Palumbo)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the assignment of child support obligations to the department; creation of debt owed to state; subrogation of the department of welfare to rights of recipient; and providing for release of assignment.

Be it enacted by the Legislature of West Virginia:

That article three, chapter nine of the code of West Vir-
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 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

1 Any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, upon receipt of such assistance be deemed to have assigned to the West Virginia department of welfare all rights, title and interest such recipient may have to the receipt of support and maintenance moneys from any person responsible for the support and maintenance of any member of the benefit group. Persons responsible for support and maintenance shall include all persons who under the laws of the state of West Virginia owe obligations of support or maintenance to a child or to the caretaker of a child. The assignment contemplated herein shall include all amounts of support and maintenance which shall be accrued to the recipient of assistance and not received and all amounts of support and maintenance which shall accrue during recipient's period of eligibility: Provided, That, subject to applicable federal and state laws, the department of welfare shall be entitled to retain only so much of the support and maintenance as is necessary to reimburse the public assistance actually paid.

23 Each applicant for assistance subject to the assignment established herein shall (during the application process) be informed in writing of the nature of the assignment.

26 Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the department of welfare by the person or persons who are responsible for the support and maintenance of such child, children or caretaker in an amount equal to the
amount of assistance money paid: Provided, however, that the debt shall be limited by the amount established in any court order or final decree of divorce if the amount in such order or decree is less than the amount of assistance paid.

The assignment hereunder shall subrogate the department of welfare to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby the department of welfare may be reimbursed for moneys expended on behalf of the child, children or caretaker. The department of welfare shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment hereunder and shall be empowered to receive such money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The debt created under this section shall not be incurred by nor at any time be collected from a responsible person who is a recipient of federal and state assistance moneys for the benefit of any child for the period such person or persons remain in such state.

The assignment created hereunder shall be released upon closure of the assistance case and the termination of assistance payments except for such support and maintenance obligations accrued and owing at the time of closure which shall be necessary to reimburse the department for any balance of assistance payments made. The department of welfare may, at the election of the recipient, continue to receive support and maintenance moneys on behalf of the recipient following closure of the assistance case and shall distribute such moneys to the caretaker, child or children. The department of welfare shall notify in writing all appropriate persons of the terms of the release of assignment hereunder.
CHAPTER 14
(H. B. 1484—By Mr. Albright and Mr. Martin, 35th District)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to juvenile offenders rehabilitation; providing for a short title; setting forth legislative purposes and intent; stating definitions; describing the responsibility of the department of welfare; providing for the establishment and maintenance of rehabilitative facilities for status offenders; describing the programs and services of such rehabilitative facilities; requiring county boards of education to provide instruction for children residing at such facilities; authorizing the department of welfare to enforce legal custody; describing reporting requirements; and providing for a catalogue of services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-1. Short title.
§49-5B-2. Purpose and intent.
§49-5B-3. Definitions.
§49-5B-4. Responsibilities of the department of welfare.
§49-5B-5. Rehabilitative facilities for status offenders.
§49-5B-6. Enforcement of legal custody.
§49-5B-7. Reporting requirements; cataloguing of services.

§49-5B-1. Short title.

1 This article shall be known and cited as the “West Virginia Juvenile Offender Rehabilitation Act.”
§49-5B-2. Purpose and intent.

1 It is the purpose and intent of the Legislature to provide
2 for the creation of all reasonable means and methods that can
3 be established by a humane and enlightened state, solicitous
4 of the welfare of its children, for the prevention of delin-
5 quency and for the care and rehabilitation of delinquent
6 children. It is further the intent of the Legislature that
7 this state, through the department of welfare, establish, main-
8 tain, and continuously refine and develop, a balanced and
9 comprehensive state program for children who are potentially
10 delinquent or are delinquent, other than those children com-
11 mitted to the care and custody of the department of correc-
12 tions.

§49-5B-3. Definitions.

1 For the purposes of this article:

2 (1) “Juvenile offender” means an individual subject to
3 the exercise of juvenile court jurisdiction for purposes of
4 adjudication and treatment as a delinquent.

5 (2) “Criminal-type offender” means a juvenile who has
6 been charged with delinquency or adjudicated a delinquent for
7 conduct which would be a crime if committed by an adult.

8 (3) “Status offender” means a juvenile who has been
9 charged with delinquency or adjudicated a delinquent for
10 conduct which would not be a crime if committed by an adult.

11 (4) “Accused juvenile offender” means a juvenile with re-
12 spect to whom a petition has been filed in the juvenile court
13 alleging that such juvenile is a criminal-type offender or is
14 a status offender and no final adjudication has been made by
15 the juvenile court.

16 (5) “Adjudicated juvenile offender” means a juvenile
17 whom the juvenile court has determined is a criminal-type
18 offender or is a status offender.

19 (6) “Facility” means a place, an institution, a building
20 or part thereof, set of buildings or an area whether or not
21 enclosing a building or set of buildings which is used for
the lawful custody and treatment of juveniles and may be owned or operated by public or private agencies.

(7) "Secure facility" means a facility which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents.

(8) "Nonsecure facility" means a facility not characterized by use of physically restricting construction, hardware and procedures and which provides its residents access to the surrounding community with minimal supervision.

(9) "Community-based" when used to describe a facility, program or service means a small, open group home or other suitable place located near the juvenile’s home or family, and programs of community supervision and service which maintain community participation in the planning, operation and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social and psychological guidance, training, counseling, alcoholism treatment, drug treatment and other rehabilitative services.

(10) "Lawful custody" means the exercise of care, supervision and control over a juvenile offender or nonoffender pursuant to the provisions of the law or of a judicial order or decree.

(11) “Exclusively,” when used to describe the population of a facility, means that the facility is used only for a specifically described category of juvenile to the exclusion of all other types of juveniles.

(12) "Temporary resident" means a status offender temporarily residing in a rehabilitative facility awaiting court action in a detention hearing, adjudicatory hearing, or a dispositional hearing.

§49-5B-4. Responsibilities of the department of welfare.

(a) The department of welfare is empowered to establish, and shall establish, subject to the limits of funds available
or otherwise appropriated therefor, programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities, and to encourage a diversity of alternatives within the juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment and home probation, and any other designated community-based diagnostic, treatment or rehabilitative service;

(2) Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

(5) Educational programs or supportive services designed to keep delinquents, and to encourage other youth to remain, in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs de-
CHILD WELFARE

39 signed to assist youth who otherwise would not be reached
40 by traditional youth assistance programs;

41 (8) A statewide program designed to reduce the number of
42 commitments of juveniles to any form of juvenile facility as a
43 percentage of the state juvenile population, to increase the use
44 of nonsecure community-based facilities as a percentage of
45 total commitments to juvenile facilities, and to discourage the
46 use of secure incarceration and detention.

47 (b) The department of welfare shall establish, within the
48 funds available, an individualized program of rehabilitation for
49 each accused juvenile offender referred to the department after
50 being allowed an improvement period by the juvenile court,
51 and for each adjudicated juvenile offender who, after adjudica-
52 tion, is referred to the department for investigation or treatment
53 or whose custody is vested in the department. Such individual-
54 ized program of rehabilitation shall take into account the
55 programs and services to be provided by other public or
56 private agencies or personnel which are available in the
57 community to deal with the circumstances of the particular
58 child. Such individualized program of rehabilitation shall
59 be furnished to the juvenile court and shall be available to
60 counsel for the child; it may be modified from time to time
61 at the direction of the department or by order of the juvenile
62 court. The department may develop an individualized program
63 of rehabilitation for any child referred for noncustodial
64 counseling under section five, article three of this chapter, for
65 any child receiving counsel and advice under section five,
66 article three-a of this chapter, or for any other child upon
67 the request of a public or private agency.

68 (c) The department of welfare is authorized to enter into
69 cooperative arrangements and agreements with private agencies
70 or with agencies of the state and its political subdivisions to
71 effectuate the purpose of this article.

§49-5B-5. Rehabilitative facilities for status offenders.

1 (a) The department of welfare shall, within the limits of
2 state and federal funds appropriated therefor, establish and
3 maintain one or more rehabilitative facilities to be used ex-
4clusively for the lawful custody of status offenders. Each
such facility shall be, primarily, a nonsecure facility having as its primary purpose the rehabilitation of adjudicated juvenile offenders who are status offenders. Such facility shall not have a bed capacity for more than twenty children, and shall minimize the institutional atmosphere and prepare the child for reintegration into the community: Provided, That such facility may function as a temporary residential facility for accused juvenile offenders when the juvenile is a status offender and no final adjudication has been made by the juvenile court: Provided, however, That a portion of such facility may be designed and operated as a secure facility used exclusively for status offenders whom the juvenile court has specifically found to be so unmanageable, ungovernable and antisocial that no other reasonable alternative exists, or could exist, for treatment or restraint other than placement in a secure facility. Temporary residents of the facility shall only be placed in the secure portion of the facility by order of the juvenile court upon a specific finding by the court that the child is likely to injure himself or others or to run away if placed in a less restrictive environment: Provided, That unless the court order committing the child specifically orders that the child not be removed from the secure portion of the facility, the person having control of the facility shall have the authority to permit any temporary resident to remain in the nonsecure portions of the facility if such temporary resident demonstrates a willingness to remain at the facility voluntarily and to conform his or her conduct to the lawful requirements established for residents of the nonsecure portions of the facility.

(b) Within the funds available, rehabilitative programs and services shall be provided by or through each such facility and may include, but not be limited to, medical, educational, vocational, social and psychological guidance, training, counseling, alcoholism treatment, drug treatment and other rehabilitative services. The department of welfare shall provide to each child adjudicated delinquent and committed to the facility a program of treatment and services consistent with the individualized program of rehabilitation developed for such child. In the case of any other child residing at the facility, the department shall provide such programs and services as may be proper in the cir-
cumstances including, but not limited to, any such programs or services directed to be provided by the court.

(c) The board of education of the county in which the facility is located shall provide instruction for children residing at the facility. Residents who can be permitted to do so shall attend local schools, and instruction shall otherwise take place at the facility.

(d) Facilities established pursuant to this section shall be structured so as to be or become community-based facilities.

§49-5B-6. Enforcement of legal custody.

The department of welfare shall have authority to require any child committed to its legal custody to remain at and to return to the residence to which the child is assigned by the department or by the juvenile court. In aid of such authority, and upon request of a designated employee of the department, any police officer, sheriff, deputy sheriff, member or officer of the department of public safety or juvenile court probation officer is authorized to take any such child into custody and return such child to his or her place of residence or into the custody of a designated employee of the department of welfare.

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

(a) The department of welfare shall from time to time, but not less often than annually, review its programs and services and submit a report to the governor, the Legislature and the supreme court of appeals, analyzing and evaluating the effectiveness of the programs and services being carried out by the department. Such report shall include, but not be limited to, an analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report, and shall further describe programs and services which should be implemented to further the purposes of this article. Such report shall also include, but not be limited to, relevant information concerning the number of children comprising the population of any rehabilitative facility during the period covered by the report, the length of residence, the nature of the problems of each child, the child's response to programs and services and such other information as will enable a user of the
17 report to ascertain the effectiveness of the facility as a re-
18 habilitative facility.

19 (b) The department of welfare shall, on or before the first
day of August, one thousand nine hundred seventy-nine, and
20 from time to time thereafter, but not less often than annually,
21 prepare a descriptive catalogue of its juvenile programs and
22 services and shall distribute copies of the same to every juvenile
court in the state and, at the direction of the juvenile court,
23 such catalogue shall be distributed to attorneys practicing be-
24 fore such court. Such catalogue shall also be made available
to members of the general public upon request. The catalogue
28 shall contain sufficient information as to the persons or agen-
29 cies responsible for particular programs and services so as to
30 enable a user of the catalogue to make inquiries and referrals.

CHAPTER 15

(Com. Sub. for H. B. 1452—By Mr. Teets and Mr. Tompkins)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter
fourteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to increasing the
compensation of judges of the court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.


1 Each judge of the court shall receive one hundred seven
dollars for each day actually served, and actual expenses in-
3 curred in the performance of his duties. The number of days
served by each judge shall not exceed one hundred in any
fiscal year, except by authority of the joint committee on
government and finance. Requisitions for compensation and
expenses shall be accompanied by sworn and itemized state-
ments, which shall be filed with the auditor and preserved
as public records. For the purpose of this section, time served
shall include time spent in the hearing of claims, in the con-
sideration of the record, in the preparation of opinions and in
necessary travel.

CHAPTER 16
(S. B. 523—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1979; 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 pay-
ments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board
of regents; department of corrections; department of
employment security; department of finance and ad-
ministration; department of health; department of high-
ways; department of motor vehicles; department of
natural resources; department of public safety; division
of vocational rehabilitation; governor's office—emer-
gency flood disaster relief; public service commission; and
treasury department, to be moral obligations of the
state and directing payment thereof.

The Legislature has considered the findings of fact
and recommendations reported to it by the court of
claims concerning various claims against the state and
agencies thereof, and in respect to each of the follow-
ing 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 Board of Regents:

(To be paid from General Revenue Fund)

Abbott Laboratories..................................................$637.72
Ace Glass, Inc............................................................$71.49
Air Products and Chemicals, Inc.................................$204.37
The C & P Telephone Company of WV..............................$144.34
Central States Resources, Inc...................................$17,356.03
Climate Makers of Charleston, Inc...............................$903.00
The Crocker-Fells Company.......................................$560.86
Cutter Laboratories, Inc..........................................$1,248.00
Lillian Dalessio.......................................................$300.00
Diagnostic Isotopes, Inc..........................................$81.60
Ehrenreich Photo-Optical Ind. Inc...............................$388.95
Fairmont Supply Company.........................................$20.40
Hubbard Pump Co.....................................................$20.89
Light Gallery and Supply Co.....................................$31.00
Roche Laboratories, Inc..........................................$1,702.50
State Farm Mutual Auto Insurance Co., subrogee of Dana Lee Selvig $308.99
Stuart’s Drug & Surgical Supply Co................................$757.16
Syva, Inc.................................................................$80.48
Uarco, Inc...............................................................$713.18
Todd W. Ware and Taylor Publishing Co..........................$3,096.51
Warren Associates....................................................$23.20
John M. Weber..........................................................$3,400.00

(b) Claims against the Department of Corrections:

(To be paid from General Revenue Fund)

Bernhardt’s Clothing Inc...........................................$1,986.80
Davis Memorial Hospital..........................................$3,233.19
Memorial General Hospital.......................................$10,077.71
44  (4) Positive Peer Culture, Inc. .......................... $ 26,341.15
45  (5) Albert K. Tyre ...........................................$ 178.10

46  (c) Claim against the Department of
47      Employment Security:
48      (To be paid from Employment
49      Security Fund)

50  (1) Odlund Haney Spangler, Jr. .......................$ 88.50

51  (d) Claim against the Department of Finance
52      and Administration:
53      (To be paid from General Revenue Fund)
54  (1) Guyan Transfer and Sanitation, Inc. ......$ 4,290.00

55  (e) Claims against the Department of Health:
56      (To be paid from General Revenue Fund)

57  (1) American Hospital Supply .......................$ 424.32
58  (2) Carl L. Baker, Jr. .................................$ 6,450.01
59  (3) H. M. Curry .......................................... $ 6,273.89
60  (4) Jack L. Rader ........................................$ 4,907.41
61  (5) Henry Elden & Associates .......................$ 71,889.00
62  (6) Moore Business Forms, Inc. ....................$ 51.42
63  (7) Orkin Exterminating, Inc. .......................$ 212.00
64  (8) Silas C. Wiersma ................................. $ 1,120.00

65  (f) Claims against the Department of
66      Highways:
67      (To be paid from State Road Fund)

68  (1) William J. Adkins, Dorothy Marie
69      Adkins, Armilda Wiley, and Dorothy
70      Marie Adkins, as next friend of Mary
71      Jane Adkins and Peggy Joyce
72      Adkins .................................................$ 2,000.00
73  (2) Wayne Bayliss ................................. $ 251.83
74  (3) Jeffrey D. Bubar .................................$ 92.24
75  (4) The C & P Telephone Co. of W V ...............$ 1,399.97
76  (5) Claywood Park Public Service District  $ 162.50
77  (6) Stanley N. Cosner ..................................$ 246.00
78  (7) B. H. Cottle and B. H. Cottle, Executor
79      of the Estate of Lucy M. Cottle,
80      deceased ....................................... $ 1,200.00
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<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
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<tbody>
<tr>
<td>James H. Curnutte, Jr. &amp; Deborah L. Curnutte</td>
<td>$4,604.73</td>
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<td>Rush Fields</td>
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<td>A. M. Fredlock, II</td>
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<td>Teresa K. Gillispie &amp; Johnny Wayne Gillispie</td>
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<td>Charles R. Gore</td>
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<td>Halliburton Services</td>
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<td>Linda E. Hamilton</td>
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<td>Douglas Haney</td>
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<td>Howard A. Haynes</td>
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<td>Arnold G. Heater &amp; Geraldine Heater</td>
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<td>Alvin O. Hunter</td>
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<tr>
<td>R. L. Jarrell</td>
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<td>Forest Joe King</td>
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<td>Forest Joe King, as father &amp; next friend of Beverly King</td>
<td>$2,500.00</td>
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<tr>
<td>Forest Joe King, as father &amp; next friend of Denny Joe King</td>
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<td>Patricia Ann King</td>
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<td>Herman F. Lilly</td>
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<td>Deloris J. Lively</td>
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<td>Morrison Printing Co., Inc.</td>
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<td>Larry Roton</td>
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<td>Mae Russell</td>
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<td>James Ryan</td>
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<td>Robert Smith and Elizabeth Smith</td>
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<td>A. A. Spagnuolo</td>
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<td>Barbara H. Spitzer</td>
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<td>Polly Stevens, Guardian of the Estate of James Walter Stevens and Timothy Stevens</td>
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<td>Connie Ann Stone</td>
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<td>Charles E. Taylor &amp; Mary P. Taylor</td>
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<tr>
<td>Willard P. Teets, Attorney in Fact for Percy E. Teets</td>
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### Claims Against the State

#### (Ch. 16)

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<thead>
<tr>
<th>Page</th>
<th>Claim Description</th>
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<tr>
<td>122</td>
<td>John Tillinghast &amp; Janet Tillinghast</td>
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<td>123</td>
<td>Vecellio &amp; Grogan, Inc.</td>
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<td>W. F. Webb</td>
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<td>125</td>
<td>Patrick West</td>
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<td>126</td>
<td>Loraine White &amp; Velma White</td>
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<td>127</td>
<td>Claim against the Department of Motor Vehicles: (To be paid from State Road Fund)</td>
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<td>128</td>
<td>Wood County Bank</td>
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<td>The C &amp; P Telephone Co. of WV</td>
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<td>Henry Elden &amp; Associates</td>
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<td>Alice Marcum</td>
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<td>McCloy Construction Company, Inc.</td>
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<td>135</td>
<td>Ostrin Electric Co.</td>
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<td>Richard L. Cunningham</td>
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<td>Joseph Larry Garrett</td>
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<td>Ora T. Herron</td>
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<td>Harry Glenn Lucas, Jr.</td>
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<td>Lowell J. Maxey</td>
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<td>147</td>
<td>Icy Mae DeWeese</td>
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<td>148</td>
<td>Ethel Engegno</td>
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<td>149</td>
<td>Rondal Fury</td>
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<td>Ralph Keeling</td>
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<td>Paul Leach</td>
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<td>Ralph Parker</td>
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<td>153</td>
<td>Elva Petts</td>
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<td>154</td>
<td>Gertrude Preston</td>
<td>$5,771.49</td>
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</tbody>
</table>
Ch. 16] Claims Against the State 39

158 (9) James Preston ........................................... $ 5,888.75
159 (10) Private Diagnostic Clinic (Duke University Medical Center) ........................................... $ 399.18
161 (11) Harry Wells ........................................... $ 3,423.80
162 (12) Arthur White ........................................... $ 5,217.75

163 (k) Claims against the Governor's Office—
164 Emergency Flood Disaster Relief:
165 (To be paid from General Revenue Fund)
166 (1) Gladys Barfield ........................................... $ 700.16
167 (2) Thelma J. Stone ........................................... $ 2,500.00
168 (3) Patricia Wilson, George P. Wilson, and
169 Gladys V. Wilson ........................................... $ 1,200.00
170 (4) Alert Sanitation ........................................... $ 2,350.00
171 (5) Alex Ray ........................................... $ 1,175.00
172 (6) Robert L. and Mae Massie ........................................... $ 465.00

173 (l) Claim against the Public Service
174 Commission:
175 (To be paid from Special Revenue Fund)
176 (1) Transport Motor Express, Inc. ........................................... $ 837.00

177 (m) Claim against the Treasury Department:
178 (To be paid from General Revenue Fund)
179 (1) Patrick Plaza Dodge, Inc. ........................................... $ 142.50

The Legislature finds that the above moral obligations
and the appropriation made in satisfaction thereof shall
be the full compensation for all claimants, and that
prior to the payments to any claimant provided for in
this bill, the court of claims shall receive a release from
said claimant releasing any and all claims for moral
obligations arising from the matters considered by the
Legislature in the finding of the moral obligations and
the making of the appropriations for said claimant. The
court of claims shall deliver all releases obtained from
claimants to the department against which the claim
was allowed.
CHAPTER 17
(S. B. 524—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents, department of corrections, department of health, department of public safety, and the secretary of state to be moral obligations of the state and directing payment thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities and services rendered by certain claimants herein and has considered claims against the state, the board of regents, department of corrections, department of health, department of public safety, and the secretary of state, agencies thereof, which have arisen due to overexpenditures of departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities and services rendered by each claimant, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, 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 upon receipt of a properly executed requisition supported by an itemized invoice, statement or
other satisfactory document as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Board of Regents:
(To be paid from General Revenue Fund)
(1) Capitol Business Equipment, Inc. $ 951.06

(b) Claims against the Department of Corrections:
(To be paid from General Revenue Fund)
(1) Alling & Cory $ 4,401.40
(2) IBM Corporation $ 3,962.30
(3) Physicians Fee Office $ 2,956.50

c) Claims against the Department of Health:
(To be paid from General Revenue Fund)
(1) Charleston Area Medical Center, Inc. $20,000.00

d) Claims against the Department of Public Safety:
(To be paid from General Revenue Fund)
(1) The County Commission of Mason County $ 3,600.00
(2) R. L. Smith, d/b/a Architectural Associates $ 879.91

e) Claims against the Secretary of State:
(To be paid from General Revenue Fund)
(1) Eastman Kodak Co. $ 275.00
(2) Texaco, Inc. $ 33.09
TOTAL $37,059.26

CHAPTER 18
(S. B. 338—By Mr. Rogers)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


In addition to definitions appearing in subsequent articles, in this chapter:

1 (1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

2 (2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.

3 (3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, trans-
portation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest
in land means the price at which the goods, services or
interest in land are offered for sale by the seller to cash
buyers in the ordinary course of business, and may in-
clude (a) applicable sales, use, privilege, and excise
and documentary stamp taxes, (b) the cash price of
accessories or related services such as delivery, installa-
tion, servicing, repairs, alterations and improvements,
and (c) amounts actually paid or to be paid by the
seller for registration, certificate of title, or license fees.

(7) "Closing costs" with respect to a debt secured by
an interest in land include:

(a) Fees or premiums for title examination, title
insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust,
mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insur-
ance;

(d) Official fees and fees for notarizing deeds and
other documents;

(e) Appraisal fees; and

(f) Credit reports.

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

(9) "Commissioner" means the commissioner of bank-
ing of West Virginia.

(10) "Conspicuous": A term or clause is conspicuous
when it is so written that a reasonable person against
whom it is to operate ought to have noticed it. Whether
a term or clause is conspicuous or not is for decision by
the court.

(11) "Consumer" means a natural person who incurs
debt pursuant to a consumer credit sale or a consumer
loan.

(12) (a) Except as provided in paragraph (b), "con-
sumer credit sale" is a sale of goods, services or an
interest in land in which:
(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
(ii) The buyer is a person other than an organization;
(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
(iv) Either the debt is payable in installments or a sales finance charge is made; and
(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

(b) “Consumer credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

13. (a) “Consumer lease” means a lease of goods:
(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;
(ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and
(iii) Which is for a term exceeding four months.

(b) “Consumer lease” does not include a lease made pursuant to a lender credit card or similar arrangement.

14. “Consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:
(a) The debtor is a person other than an organization;
(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;
(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

(15) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(16) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(17) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(18) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(19) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a pre-existing open-end-credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which
would be a home solicitation sale if credit were extended
by the seller is a home solicitation sale although the
goods or services are paid for in whole or in part by a
consumer loan in which the creditor is subject to claims
and defenses arising from the sale.

(20) Except as otherwise provided, “lender” includes
an assignee of the lender’s right to payment but use of
the term does not in itself impose on an assignee any
obligation of the lender.

(21) “Lender credit card or similar arrangement”
means an arrangement or loan agreement, other than a
seller credit card, pursuant to which a lender gives a
debtor the privilege of using a credit card, letter of credit,
or other credit confirmation or identification in transac-
tions out of which debt arises:

(a) By the lender’s honoring a draft or similar order
for the payment of money drawn or accepted by the
consumer;

(b) By the lender’s payment or agreement to pay
the consumer’s obligations; or

(c) By the lender’s purchase from the obligee of
the consumer’s obligations.

(22) “Loan” includes:

(a) The creation of debt by the lender’s payment of
or agreement to pay money to the consumer or to a
third party for the account of the consumer other than
debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account
with the lender upon which the consumer is entitled to
draw immediately;

(c) The creation of debt pursuant to a lender credit
card or similar arrangement; and

(d) The forbearance of debt arising from a loan.

(23) (a) “Loan finance charge” means the sum of
(i) all charges payable directly or indirectly by the
debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable:

- Interest or any amount payable under a point, discount, or other system of charges, however denominated,
- premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(24) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(25) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.
(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(27) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "payable in installments."

(28) "Person" or "party" includes a natural person or an individual, and an organization.

(29) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(30) "Precomputed loan." A loan, refinancing or consolidation is “precomputed” if the debt is expressed as a
sum comprising the principal and the amount of the loan
finance charge computed in advance.

(31) "Precomputed sale." A sale, refinancing or con-
solidation is "precomputed" if the debt is expressed as
a sum comprising the amount financed and the amount
of the sales finance charge computed in advance.

(32) "Presumed" or "presumption" means that the
trier of fact must find the existence of the fact presumed
unless and until evidence is introduced which would
support a finding of its nonexistence.

(33) "Principal" of a loan means the total of:
(a) The net amount paid to, receivable by or paid
or payable for the account of the debtor;
(b) The amount of any discount excluded from the
loan finance charge; and
(c) To the extent that payment is deferred:
(i) Amounts actually paid or to be paid by the lender
for registration, certificate of title, or license fees if not
included in (a); and
(ii) Additional charges permitted by this chapter.

(34) "Revolving charge account" means an agreement
between a seller and a buyer by which (a) the buyer
may purchase goods or services on credit or a seller
credit card, (b) the balances of amounts financed and
the sales finance and other appropriate charges are
debited to an account, (c) a sales finance charge if made
is not precomputed but is computed periodically on the
balances of the account from time to time, and (d) there
is the privilege of paying the balances in installments.

(35) "Revolving loan account" means an arrangement
between a lender and a consumer including, but not
limited to, a lender credit card or similar arrangement,
pursuant to which (a) the lender may permit the con-
sumer to obtain loans from time to time, (b) the unpaid
balances of principal and the loan finance and other
appropriate charges are debited to an account, (c) a loan
finance charge if made is not precomputed but is com-
puted periodically on the outstanding unpaid balances
of the principal of the consumer's account from time to
time, and (d) there is the privilege of paying the balances
in installments.

(36) "Sale of goods" includes any agreement in the
form of a bailment or lease of goods if the bailee or
lessee agrees to pay as compensation for use a sum
substantially equivalent to or in excess of the aggregate
value of the goods involved and it is agreed that the
bailee or lessee will become, or for no other or a nominal
consideration has the option to become, the owner of
the goods upon full compliance with his obligations
under the agreement.

(37) "Sale of an interest in land" includes a lease in
which the lessee has an option to purchase the interest
and all or a substantial part of the rental or other pay-
ments previously made by him are applied to the pur-
chase price.

(38) "Sale of services" means furnishing or agreeing
to furnish services and includes making arrangements
to have services furnished by another.

(39) "Sales finance charge" means the sum of (a) all
charges payable directly or indirectly by the buyer and
imposed directly or indirectly by the seller or issuer of a
seller credit card as an incident to the extension of
credit, including any of the following types of charges
which are applicable: Time-price differential, however
denominated, including service, carrying or other charge,
premium or other charge for any guarantee or insurance
protecting the seller against the buyer's default or other
credit loss, and (b) charges incurred for investigating
the collateral or credit-worthiness of the buyer or for
commissions or brokerage for obtaining the credit, irre-
spective of the person to whom the charges are paid or
payable; unless the seller had no notice of the charges
when the credit was granted. The term does not include
charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(40) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(41) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(42) "Services" includes (a) work, labor and other personal services, (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(43) "Supervised financial organization" means a person, other than a supervised lender or an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the person to make consumer loans; and

(b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(44) "Supervised lender" means a person authorized to make or take assignments of supervised loans.
(45) "Supervised loan" means a consumer loan made by other than a supervised financial organization, including a loan made pursuant to a revolving loan account, where the principal does not exceed one thousand five hundred dollars and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-107. Loan finance charge for supervised lenders.

§46A-4-111. Maximum interest when loan is in excess of one thousand five hundred dollars.

§46A-4-107. Loan finance charge for supervised lenders.

1. (1) With respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

2. (2) The loan finance charge, calculated according to the actuarial method, may not exceed the total of:

3. (a) Thirty-six percent per year on that part of the unpaid balances of the principal which is two hundred dollars or less;

4. (b) Twenty-four percent per year on that part of the unpaid balances of the principal which is more than two hundred dollars but does not exceed twelve hundred dollars; and

5. (c) Eighteen percent per year on that part of the unpaid balances of the principal which is more than twelve hundred dollars.

6. (3) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

7. (a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and
(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven, article three of this chapter.

(4) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all principal amounts within a specified range. A loan finance charge so made does not violate subsection (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2), and

(b) When applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to subdivision (a) of this subsection (5) by more than eight percent of the rate calculated according to said subdivision (a).

(6) With respect to a revolving loan account:

(a) A charge may be made by a supervised lender in each monthly billing cycle which is one twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt,

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and ex-
cluding all additional borrowings during such billing
cycle, or

(iii) Subject to subsection (5), the median amount
within a specified range within which the average daily
balance of the debt or the balance of the debt at the
beginning of the first day of the billing cycle, less all
payments on and credits to such debt during such billing
cycle and excluding all additional borrowings during
such billing cycle, is included. For the purpose of this
subdivision (a) a billing cycle is monthly if the billing
statement dates are on the same day each month or do
not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum
loan finance charge which may be made by a supervised
lender is that percentage which bears the same relation
to an applicable monthly percentage as the number of
days in the billing cycle bears to thirty.

(c) Notwithstanding subdivisions (a) and (b) of this
subsection (6), if there is an unpaid balance on the date
as of which the loan finance charge is applied, the licensee
may contract for and receive a charge not exceeding
fifty cents if the billing cycle is monthly or longer, or the
pro rata part of fifty cents which bears the same relation
to fifty cents as the number of days in the billing cycle
bears to thirty if the billing cycle is shorter than monthly,
but no charge may be made pursuant to this subdivision
(c) if the lender has made an annual charge for the
same period as permitted by the provisions on addi-
tional charges.

§46A-4-111. Maximum interest when loan is in excess of one
thousand five hundred dollars.

No licensee shall directly or indirectly charge, contract
for, or receive any interest, discount or consideration
greater than six percent per annum upon the loan, use
or forbearance of money, goods or things in action, or
upon the loan, use or sale of credit, when the amount or
value thereof is more than one thousand five hundred
dollars. The foregoing prohibition shall also apply to
any licensee who permits any person, as borrower or as
endorser, guarantor or surety for any borrower, or
otherwise, to owe directly or contingently, or both, to
the licensee at any time the sum of more than one
thousand five hundred dollars for principal.

CHAPTER 19
(H. B. 1060—By Mr. Albright)
[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred four, article
one, chapter forty-six-a of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, relating to the
applicability of the West Virginia consumer credit and pro­
tection act to certain consumer transactions involving revolving
charge and loan accounts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVI­
SIONS.

§46A-1-104. Application.

(1) This chapter applies if a consumer, who is a resident
of this state, is induced to enter into a consumer credit sale
made pursuant to a revolving charge account or to enter into
a revolving charge account or to enter into a consumer loan
made pursuant to a revolving loan account, by personal or
mail solicitation, and the goods, services or proceeds are
delivered to the consumer in this state and payment on such
account is to be made from this state.

(2) With respect to consumer credit sales or consumer
loans consummated in another state, a creditor may not
collect in an action brought in this state a sales finance charge
or loan finance charge in excess of that permitted by this
chapter.

CHAPTER 20
(H. B. 1325—By Mr. Speaker, Mr. Sn)

[Passed February 23, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding the substance pentazocine to schedule four of the controlled substances law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-210. Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Barbital;
(2) Chloral betaine;
(3) Chloral hydrate;
(4) Ethchlorvynol;
(5) Ethinamate;
(6) Methohexital;
(7) Meprobamate;
(8) Methylphenobarbital, as methobarbital;
(9) Paraldehyde;
(10) Petrichloral;
(11) Phenobarbital;
(12) Lorazepam;
(13) Mebutamate;
(14) Clorazepate;
(15) Chlordiazepoxide;
(16) Clonazepam;
(17) Diazepam;
(18) Flurazepam;
(19) Oxazepam;
(20) Prazepam;
(21) Pentazocine.

(c) Any material, compound, mixture or preparation
which contains any quantity of the following substance,
including its salts, isomers (whether optical, position or
geometric) and salts of such isomers whenever the existence
of such salts, isomers and salts of isomers is possible:
Fenfluramine.

(d) Unless specifically excepted or unless listed in another
schedule, any material, compound, mixture or preparation
which contains any quantity of the following substances
having a stimulant effect on the central nervous system,
including its salts, isomers (whether optical, position or geo-
metric) and salts of such isomers whenever the existence of
such salts, isomers and salts of isomers is possible within the
specific chemical designation:
(1) Diethylpropion;
(2) Phentermine;
(3) Pemoline (including organometallic complexes and che-
lates thereof);
(4) Dextropropoxyphene (alpha—(+)—4—dimethylamino
—1, 2—diphenyl—3—methyl—2—propionoxybutane).
CHAPTER 21
(S. B. 57—By Mr. Steptoe)

[Passed January 24, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-nine, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to foreign corporations; relating to admission and qualification of foreign corporations to conduct affairs or do or transact business in this state; relating to activities of foreign corporations permitted to be done in this state without a certificate of authority; and correcting "county" to "country" and an erroneous reference to another section of the code.

Be it enacted by the Legislature of West Virginia:

That section forty-nine, article one, 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 1. BUSINESS AND NONPROFIT CORPORATIONS.
§31-1-49. Admission of foreign corporation; acts permitted to be done without certificate of authority.

1 (a) No foreign corporation shall have the right to conduct affairs or do or transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this article to conduct affairs or do or transact any business in this state which would not be permitted to be conducted, done or transacted by a corporation organized under this article. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this article contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.
(b) Without excluding other activities which may not constitute conducting affairs or doing or transacting business in this state, a foreign corporation shall not be considered to be conducting affairs or doing or transacting business in this state, for the purposes of this article, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any legal action or proceeding or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

2. Holding meetings of its directors, shareholders or members or carrying on other activities concerning its internal affairs;

3. Maintaining bank accounts;

4. Creating evidences of debt, mortgages or liens on real or personal property;

5. Securing or collecting debts or enforcing any rights in property securing the same;

6. Conducting its affairs or doing or transacting business in interstate commerce;

7. Granting funds or other gifts;

8. Distributing information to its shareholders or members; or

9. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(c) In addition to those activities enumerated in subsection (b) of this section, a foreign corporation shall not be considered to be conducting affairs or doing or transacting business in this state, for the purposes of this article, by reason of carrying on in this state one or more of the following activities:

1. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing
and maintaining trustees or depositaries with relation to
its securities;

(2) Effecting sales through independent contractors;
or

(3) Soliciting or procuring orders, whether by mail or
through employees or agents or otherwise, where such
orders require acceptance without this state before be-
coming binding contracts.

(d) In addition to those activities enumerated in sub-
sections (b) and (c) of this section, a foreign corporation
shall not be considered to be conducting affairs or doing
or transacting business in this state, for the purposes of
this article, by reason of carrying on in this state one
or more of the following activities:

(1) The acquisition by purchase of loans secured by
mortgages or deeds of trust, drawn and executed in
compliance with section two, article one, chapter thirty-
eight of this code on real or personal property situated
in West Virginia pursuant to commitment agreements
or arrangements made prior to or following the origina-
tion or creation of said loans;

(2) The ownership, modification, renewal, extension,
transfer or foreclosure of such loans, or the acceptance
of substitute or additional obligors thereon;

(3) The maintaining or defending of any actions or
suits relative to such loans, mortgages or deeds of trust;

(4) The maintenance of bank accounts in West Vir-
ginia banks in connection with the collection or servicing
of such loans;

(5) The making, collection and servicing of such loans
through a resident person, firm or corporation, or a for-
eign corporation qualified to do business in West Virginia,
engaged in the business of servicing loans for investors;

(6) The taking of deeds to the mortgaged property
either in lieu of foreclosure or for the purpose of trans-
ferring title either to the federal housing administration
or to the veterans administration as the insurer or guarantor;

(7) The acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure;

(8) The management, rental, maintenance and sale, or the operating, maintaining, renting or otherwise dealing with, selling or disposing of property acquired under foreclosure sale or by agreement in lieu thereof;

(9) Physical inspection and appraisal of property in West Virginia as security for deeds of trust or mortgages and negotiations for the purchase of such loans;

(10) Any other transaction directly related to the activities above described: Provided, That if property acquired in or by reason of any of the activities defined in the provisions of subdivisions (6), (7) and (8) of this subsection shall be held longer than a period of five years, the provisions of this section shall thereafter be inapplicable.

CHAPTER 22

(H. B. 1254—By Miss Shuman and Mr. Schifano)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commutation of sentence for good conduct, classification of prisoners, and changing the name and composition of the prison classification committees and disciplinary committees.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article five, chapter twenty-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. THE PENITENTIARY.

§28-5-28. Commutation for good conduct.

1 In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their merit. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience shall be granted by the superintendent, and twenty days per month deduction shall be made from the term or terms of sentences of all prisoners in Class I, and ten days per month deduction shall be made from the term or terms of sentences of all prisoners in Class II as hereinafter provided, when no charge of misconduct has been sustained against a prisoner. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner, including escape or attempt to escape, any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the superintendent upon the recommendation of the commutation committee or the overtime work assignment committee which are hereinafter established unless, in case of escape, the prisoner voluntarily returns without expense to the state, such forfeiture shall be set aside by the superintendent. No overtime allowance or credits, in addition to the commutation of time herein provided for good conduct, may be deducted from the term or terms of sentences with the exception that for extra meritorious conduct on the part of any prisoner, he may be recommended to the board of probation and parole and to the governor for increased commutation or for a pardon or parole.

There is hereby established a commutation committee of three members which shall be composed of the associate or deputy superintendent, teacher, counselor or ranking correctional officer as may be determined by the commissioner.
The commutation committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in four classifications: Class I, Class II, Class III, Class IV and reclassify any of such prisoners from time to time as in their opinion the circumstances may require. Class III are those prisoners who have not performed in areas of assignments or have displayed misconduct and will receive no commutation of time while in this class. Class IV, special exempt, are those prisoners impaired because of age, mental or physical restrictions, confinement in a protection unit, in out-to-court or out-to-hospital status, or for any other reason determined by the commutation committee, and who may, if conduct warrants, be awarded deductions in accordance with the limits of Class I or Class II classification. The superintendent shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all classifications, changes of classifications and forfeitures of commutation of time and reasons therefor. As soon as practicable, the superintendent shall change the conduct records of prisoners now in the penitentiary to conform with said conduct record and calendar card.

There is hereby established an overtime work assignment committee of three members which shall be composed of the deputy or associate superintendent, teacher, counselor or ranking correctional officer as may be determined by the commissioner. Should any prisoner be removed from any overtime job assignment because of misconduct, an appeal shall lie to the overtime work assignment committee, and in the event of an adverse decision by this committee, the prisoner so removed by reason of misconduct shall have the right to appeal to the commissioner, whose decision shall be final.

When present overtime job assignments carrying more than twenty days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty days per calendar month.

Ten days' commutation of time for good conduct may be awarded to a prisoner for the time credited by the court as time
75 served on the sentence or sentences in local correctional fa-
76 cilities for each month so credited.

CHAPTER 23
(H. B. 781—By Mr. Caudle and Mrs. Neal)

[Passed March 10, 1979; 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-y, relating to county commissions; and authorizing county commissions to grant funds for nutritional programs operated by nonprofit legal entities.

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-y, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3y. Authority to grant funds to nutrition programs.

1 In addition to all other powers and duties now conferred by
2 law upon county commissions, such commissions are hereby
3 authorized and empowered to make grants from general
4 county revenues and any other revenues of the county avail-
5 able for such purposes, for nutritional programs operated by
6 nonprofit legal entities.
CHAPTER 24
(H. B. 1509—By Mr. Toney)
[Passed March 10, 1979; in effect July 1, 1979. 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 and their assistants, deputies and employees when utilizing their personally owned vehicles in the actual performance and discharge of their official duties and increasing such allowance to seventeen cents per mile.

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, their assistants, deputies and employees.

1 The county commission of each county shall allow to each county official and to their deputies, assistants and employees, when they are required to drive their personally owned vehicles in the actual performance and discharge of their official duties, reimbursement at the rate of seventeen cents for each mile traveled in their personally owned vehicles.

2 Every county official shall file monthly, under oath, a full and accurate account of all the actual mileage driven by him, his deputies, assistants and employees, in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county commission. Reimbursement, properly allowed, shall be made from the general county fund.
AN ACT to amend and reenact section eleven, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the county commission or municipal corporations in the county to transfer to the county development authority any property for or adaptable to use in recreational development.

Be it enacted by the Legislature of West Virginia:

That section eleven, article twelve, 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 12. COUNTY DEVELOPMENT AUTHORITIES.

§7-12-11. Participation and appropriations authorized; transfers and conveyances of property.

The county commission is hereby authorized and empowered to appoint members of the said authority and the county commission and any municipality therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The county commission of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind heretofore acquired by said county commission or municipal corporation for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county commission or municipal corporation shall deem proper.
CHAPTER 26
(Com. Sub. for S. B. 170—By Mr. Benson and Mr. Oates)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article two of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six-c; and to amend and reenact section sixteen of said article nine; all relating to increasing the salaries of the justices of the supreme court and judges of the circuit courts; providing that retirement benefits for retired judges and justices not be increased by virtue of certain salary increases; and specifying severability.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Supreme Court of Appeals.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court of appeals shall be thirty-eight thousand dollars per year.
ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.


1 The salaries of the judges of the various circuit courts shall be paid solely out of the state treasury. No county, county commission, board of commissioners or other political subdivisions shall supplement or add to such salaries.

6 The annual salary of all circuit judges shall be thirty-five thousand five hundred dollars per year.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-6c. Benefits for retired judges and justices not to be increased by virtue of certain salary increases.

§51-9-16. Severability of article.

§51-9-6c. Benefits for retired judges and justices not to be increased by virtue of certain salary increases.

1 No judge or justice receiving retirement benefits under the provisions of sections six and six-a of this article shall be entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or justice of the supreme court of appeals enacted after the first day of January, one thousand nine hundred seventy-nine: Provided, That this section shall not apply to a retired judge or justice who is disabled.

§51-9-16. Severability of article.

1 If any section, subsection, clause, phrase or requirement of this article is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. The Legislature hereby declares that it would have passed this article, and each section, subsection, sentence, clause or phrase and requirement thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or requirements be declared unconstitutional.
AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing by one the number of judges in both the tenth and eleventh judicial circuits; providing for terms of office; initial appointment; and subsequent election of such new judges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial circuits with the following number of judges, which number shall include those judges of statutory courts of record of limited jurisdiction who became circuit court judges by virtue of the judicial reorganization amendment to the West Virginia constitution:

7 The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge; the counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges; the counties of Calhoun, Jackson and Roane shall constitute the fifth circuit and shall have one judge; the county of Cabell shall constitute the sixth circuit and shall have four judges; the county of Logan
shall constitute the seventh circuit and shall have two judges; the county of McDowell shall constitute the eighth circuit and shall have two judges; the county of Mercer shall constitute the ninth circuit and shall have two judges; the county of Raleigh shall constitute the tenth circuit and shall have three judges; the counties of Greenbrier, Monroe, Pocahontas and Summers shall constitute the eleventh circuit and shall have two judges; the county of Fayette shall constitute the twelfth circuit and shall have two judges; the county of Kanawha shall constitute the thirteenth circuit and shall have seven judges; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges; the county of Harrison shall constitute the fifteenth circuit and shall have two judges; the county of Marion shall constitute the sixteenth circuit and shall have two judges; the county of Monongalia shall constitute the seventeenth circuit and shall have two judges; the county of Preston shall constitute the eighteenth circuit and shall have one judge; the counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge; the county of Randolph shall constitute the twentieth circuit and shall have one judge; the counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have one judge; the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have one judge; the county of Wayne shall constitute the twenty-fourth circuit and shall have one judge; the counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges; the counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge; the county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge; the county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge; the counties of Mason and Putnam shall constitute the twenty-ninth circuit and shall have two judges; the county of Mingo shall constitute the thirtieth circuit and
shall have one judge; and the counties of Berkeley, Jeff-

ferson and Morgan shall constitute the thirty-first circuit

and shall have one judge.

(b) Except as hereinafter provided, the terms of office

of all circuit court judges in office on the effective date

of this section, including the terms of office of the judges

of those statutory courts of record of limited jurisdiction

who became circuit court judges by virtue of the judicial

reorganization amendment to the West Virginia constitu-

tion, shall expire on the thirty-first day of December, one

thousand nine hundred eighty-four. Thereafter, the terms

of office of such circuit court judges shall be for eight

years, the first commencing on the first day of January,

one thousand nine hundred eighty-five, and ending on the

thirty-first day of December, one thousand nine hundred

ninety-two. Subsequent terms of said judges shall be for

eight years. The first term of office of the fourth circuit

court judge of the sixth circuit created by the provisions

of said subsection (a) shall commence on the first day of

July, one thousand nine hundred seventy-seven, and shall

end on the thirty-first day of December, one thousand

nine hundred seventy-eight. The second term of office of

said sixth circuit court judge shall commence on the first

day of January, one thousand nine hundred seventy-nine,

and shall end on the thirty-first day of December, one

thousand nine hundred eighty-four. Subsequent terms of

office of said sixth circuit court judge shall be for eight

years. The first term of office of the third circuit court

judge of the tenth circuit created by the provisions of

said subsection (a) shall commence on the first day of

July, one thousand nine hundred seventy-nine, and shall

end on the thirty-first day of December, one thousand

nine hundred eighty. The second term of office of said

tenth circuit judge shall commence on the first day of

January, one thousand nine hundred eighty-one, and

shall end on the thirty-first day of December, one thou-

sand nine hundred eighty-four. Subsequent terms of

office of said tenth circuit court judge shall be for eight

years.

The first term of office of the second circuit court
99 judge of the eleventh circuit created by the provisions of 
said subsection (a) shall commence on the first day of 
July, one thousand nine hundred seventy-nine, and shall 
end on the thirty-first day of December, one thousand 
nine hundred eighty. The second term of office of said 
eleventh circuit judge shall commence on the first day 
of January, one thousand nine hundred eighty-one, and 
shall end on the thirty-first day of December, one thou-
sand nine hundred eighty-four. Subsequent terms of 
office of said eleventh circuit court judge shall be for 
eight years.

110 (c) The Legislature hereby finds and declares that the 
purpose of this section is to implement the provisions of 
the judicial reorganization amendment of the West Vir-
ginia constitution; that the terms of office of all circuit 
court judges, including the judges of statutory courts of 
record of limited jurisdiction who became circuit court 
judges by virtue of the judicial reorganization amend-
ment to the West Virginia constitution, should expire on 
the same date and such judges should be elected at the 
same general election; that the legislative intent in pre-
senting said judicial reorganization amendment to the 
voters of the state for ratification was that no judge of a 
statutory court of record of limited jurisdiction who 
would become a circuit court judge by virtue of said 
judicial reorganization amendment would have his term 
of office decreased by the ratification of said judicial re-
organization amendment or be forced to run for reelection 
any sooner than he otherwise would have had to have 
run for reelection if said judicial reorganization amend-
ment had not been ratified; and that said judicial reorga-
nization amendment was ratified by the voters of the 
state at the same general election at which the judge of 
the former intermediate court of Raleigh County and the 
judge of the former intermediate court of Kanawha 
County were elected. Consistent with such findings 
and declarations, the terms of office of the judges of the 
ten and thirteenth judicial circuits who became circuit 
court judges by virtue of the judicial reorganization 
amendment to the West Virginia constitution, and who
139 were, respectively, the judges of the intermediate court
140 of Raleigh County and the intermediate court of Kanawha County, which terms commenced the first day of
141 January, one thousand nine hundred seventy-five, shall
142 expire on the thirty-first day of December, one thousand
143 nine hundred eighty-four.
144
145 (d) The election of every circuit court judge, except
146 as hereinafter provided, shall be held on the Tuesday
147 next after the first Monday in November, one thousand
148 nine hundred eighty-four, and every eighth year there-
149 after. The fourth circuit court judge of the sixth circuit
150 created by the provisions of subsection (a) of this section
151 shall be appointed originally by the governor according
152 to the provisions of section three, article ten, chapter
153 three of this code. The first election of said sixth circuit
154 court judge shall be held on the Tuesday next after the
155 first Monday in November, one thousand nine hundred
156 seventy-eight. The election for the third term of said
157 sixth circuit court judge shall be held on the Tuesday
158 next after the first Monday in November, one thousand
159 nine hundred eighty-four, and every eighth year there-
160 after. The third circuit judge of the tenth circuit created
161 by the provisions of subsection (a) of this section shall
162 be appointed originally by the governor according to the
163 provisions of section three, article ten, chapter three of
164 this code. The first election of the third tenth circuit
165 court judge shall be held on the Tuesday next after the
166 first Monday in November, one thousand nine hundred
167 eighty. The election for the third term of said tenth
168 circuit court judge shall be held on the Tuesday next
169 after the first Monday in November, one thousand nine
170 hundred eighty-four, and every eighth year thereafter.
171 The second circuit judge of the eleventh circuit created
172 by the provisions of subsection (a) of this section shall
173 be appointed originally by the governor according to
174 the provisions of section three, article ten, chapter three
175 of this code. The first election of the second eleventh
176 circuit court judge shall be held on the Tuesday next
177 after the first Monday in November, one thousand nine
178 hundred eighty. The election for the third term of said
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179 eleventh circuit court judge shall be held on the Tuesday 180 next after the first Monday in November, one thousand 181 nine hundred eighty-four, and every eighth year there- 182 after.

183 (e) The terms of court of the circuit judges of the 184 counties aforesaid shall commence and be held as herein- 185 after provided.

186 (f) On or before January one, one thousand nine hun- 187 dred eighty-three, the supreme court of appeals of West 188 Virginia shall submit to the Legislature a plan for re- 189 arranging the circuits created in subsection (a) of this 190 section.

CHAPTER 28
(Com. Sub. for H. B. 706—By Mr. Albright and Mr. Tompkins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state chartered credit unions generally; the fiscal year of such credit unions; the voting procedures, including voting by proxy with respect to such credit unions; permitting annual meetings to be held any time between the first day of January and the thirty-first day of March; and the amending of the bylaws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-7. Fiscal year; annual and special meetings; voting; proxies.

1 The fiscal year of every such corporation shall end at the 2 close of business on the thirty-first day of December. The
annual meeting of the corporation shall be held between the
first day of January and the thirty-first day of March, as may
be provided in the bylaws. Special meetings may be held by
order of the directors or of the supervisory committee, and
shall be held upon request, in writing, of ten percent of the
members. Notice of all meetings of the corporation shall be
given in the manner prescribed in the bylaws. At all meetings
of members, a member shall have but one vote, irrespective of
the number of shares held. No shareholder may vote by proxy,
but a society, association, copartnership or corporation, having
membership in a credit union, may be represented by one
person authorized by such society, association, copartnership
or corporation to so represent it. At any meeting the members
may decide upon any question of interest to the corporation,
and overrule the board of directors; and, by a three-fourths
vote of those present and represented, may amend the bylaws,
if the notice of the meeting shall have specified the question to
be considered.

CHAPTER 29
(Com. Sub. for H. B. 705—By Mr. Albright and Mr. Tompkins)
(Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section twenty-one, article ten,
chapter thirty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the intervals
and periods of which the board of directors of a credit union
may declare dividends to be paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-21. When and how dividends paid.

At such intervals and for such periods not to exceed one
year as the board of directors may authorize, and after provi-
sion for the required reserves, the board of directors of a credit
union may declare dividends to be paid from the net earnings
on all fully paid shares outstanding at the close of the period
for which the dividend is declared. Shares which become fully
paid during such period shall be entitled to a proportional part
of such dividends calculated from the first day of the month
following such payment in full.

CHAPTER 30
(H. B. 1253—By Mr. Tucker and Mr. Tompkins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-g, article three,
chapter sixty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to dishonored
checks; complaint; notice of complaint; issuance of warrant;
payment procedure; costs.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-g, 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.

§61-3-39g. Complaint; notice of complaint; issuance of warrant;
payment procedures; costs.

After receipt of a complaint for warrant for a violation of
section thirty-nine or thirty-nine-a of this article the magis-
trate court shall proceed with the issuance of the warrant as is
provided by law: Provided, That no warrant shall issue for an
offense under sections thirty-nine or thirty-nine-a of this
article which, upon conviction, would be punishable as a mis-
demeanor, unless and until the payee or holder of the check,
draft or order which has been dishonored has sent notice
thereof to the drawer of the check, draft or order in accordance
with the provisions of section thirty-nine-e of this article, or
unless and until notice has been sent by the magistrate as
hereinafter provided. Proof that such notice was sent by the
payee or holder shall be evidenced by presentation of a return
receipt indicating that the notice was mailed to the drawer by
certified mail, or, in the event the mailed notice was not re-
ceived or was refused by the drawer, by presentation of the
mailed notice itself. The magistrate court shall receive and
hold the check, draft or order.

Upon receipt of a complaint for a misdemeanor warrant
unaccompanied by proof that notice was sent by the payee or
holder, the magistrate court shall immediately prepare and
mail to the drawer of such check, draft or order a notice in
form substantially as follows and shall impose additional
court costs in the amount of ten dollars. Such notice shall be
mailed to the drawer by United States mail, first class and
postpaid, at the address provided at the time of presenting such
check, draft or order. Service of such notice shall be complete
upon mailing. Such notice shall be in form substantially as
follows:

"You are hereby notified that a complaint for a warrant for
your arrest has been filed with this office to the following
effect and purpose by ___________________________ who upon
oath complains that on the ________ day of ________________
19____, you did unlawfully issue and deliver unto him a certain
check in the amount of ___________________________ drawn on
__________ (name of bank)_______ where you did not have funds
on deposit in or credit with said bank with which to pay the
same upon presentation and pray that a warrant issue and that
you be apprehended wherever you may be found by an officer
authorized to make such an arrest and dealt with in accor-
dance with the laws of the state of West Virginia.

A warrant for arrest will be issued on or after the ________
day of ________________________________, 19______.

You can nullify the effect of said complaint and avoid arrest
by paying to the magistrate court clerk at ___________________
the amount due on said check and the costs of this proceeding
in the amount of ________________ on or before said ____________

day of ____________________, 19______, at which time you will
be given a receipt with which you can obtain said check from
the magistrate named below. The complainant is forbidden by
law to accept payment.

Magistrate court of ________________county

Date ........................................................................

Such notice shall give the drawer of any such check, draft or
order ten days within which to make payment to magistrate
court. In the event such drawer pays the amount of the check
plus court costs to the magistrate court within the ten day
period no warrant shall issue. The payment may be made to
the magistrate court in person or by mail by cash, certified
check, bank draft or money order and, in the event such pay­
ment is made by mail, the magistrate court clerk shall forth­
with mail to the maker of such check the receipt hereinbelow
required. In the event such total amount is not so paid the
court shall proceed with the issuance of the warrant as is
provided by law.

Upon receipt of payment of such total amount the magistrate
court clerk shall issue to the drawer a receipt sufficiently
describing such check with which receipt the drawer shall be
entitled to receive the dishonored check, draft or order from
the magistrate holding the check, draft or order. No service
charge shall be charged or collected by the holder or payee of
a dishonored check, draft or order after filing a complaint for
warrant. The magistrate court clerk shall forward the amount
of the check to the payee or holder thereof, along with a de­
scription of the check, draft or order sufficient to enable the
person filing the complaint to identify such check, draft or
order and the transaction involved. Costs collected shall be
dealt with as is provided by law for other criminal proceedings.

The drawer of a check, draft or order against whom a war­
rant has been issued may at any time prior to trial pay to the
court the amount of the check plus such court costs as would
be assessed if such person were found guilty of the offense
charged. Such costs shall be imposed in accordance with the provisions of section two, article three, chapter fifty of this code.

CHAPTER 31
(Com. Sub. for H. B. 926—By Mrs. Spears and Mr. Brown)
[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-c, relating to the filming or photographing of minors engaging in sexually explicit conduct; defining certain terms with respect thereto; prohibiting the filming or photographing for financial gain of minors engaged in sexually explicit conduct and the using or permitting the use of minors for such purposes; prohibiting the exhibition or distribution of such films or photographs for financial gain; and providing for criminal penalties for violations of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.
§61-8C-1. Definitions.
§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalties.
§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalties.

§61-8C-1. Definitions.
1 For the purposes of this article:
2 (a) "Minor" means any child under eighteen years of age.
(b) "Knowledge" means knowing or having reasonable cause to know which warrants further inspection or inquiry.

(c) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:

1. Genital to genital intercourse;
2. Fellatio;
3. Cunnilingus;
4. Anal intercourse;
5. Oral to anal intercourse;
6. Bestiality;
7. Masturbation;
8. Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage; or
9. Excretory functions in a sexual context.

(d) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalties.

(a) Any person who for financial gain causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct shall be guilty of a felony when such person has knowledge that any such act is being photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

(b) Any person who for financial gain photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.
(c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalties.

(a) Any person who, for financial gain, with knowledge, sends or causes to be sent, or distributes, exhibits, or displays or transports with the intent to distribute, exhibit or display any material visually portraying a minor engaged in any sexually explicit conduct shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail not more than twelve months and fined not more than two thousand dollars.

(b) Any person previously convicted under this section and who is again convicted under this section, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than two years, and fined not more than four thousand dollars.

CHAPTER 32
(S. B. 297—By Mr. Shaw and Mr. Jones)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article nine, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to indictments for burglary; burglary to commit other felo-
nies; form of indictment for burglary with the intent to commit sexual assault.

Be it enacted by the Legislature of West Virginia:

That section nine, article nine, 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 9. FORMS OF INDICTMENTS.


1 An indictment for burglary shall be sufficient if it be in form, tenor or effect as follows (after following the form in section one):

That A__________________________, on the ________________ day of ________________________, nineteen ________________, about the hour of ________________, in the night of the same day, in the said county of ________________________, in the dwelling house of one B ________________________, there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of ________________________, in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away; and then and there in the said dwelling house, ________________________ (here name the property, money or goods), of the value of ________________________ (describing each article stolen and the value thereof and the total value), of the goods and chattels (or money) of the said B ________________________, (or whoever the goods or money belonged to), in the said dwelling house then and there found, then and there feloniously and burglariously, did steal, take and carry away, against the peace and dignity of the State.

And instead of describing burglary with intent to commit larceny, the indictment may charge any other felony thus: Burglary with intent to commit sexual assault or sexual abuse, as, after the form herein is followed to the charge of the offense, “with intent in the said dwelling house feloniously and burglariously to sexually assault (or sexually abuse)’’ “one C__________ , forcibly and against his will,’’ and “then and there in the said dwelling house did feloniously and burglariously sexually assault (or
sexually abuse)” “the said C, forcibly and against his will, against the peace and dignity of the State.” And burglary with intent to commit any felony may be charged in the same count.

An indictment for entering a dwelling house or an outhouse adjoining thereto, of another, in the nighttime without breaking, or in the daytime by breaking and entering, may be in the following form, tenor or effect (after following the form in section one):

That A, on the ___ day of nineteen ..., in the said county of ..., in the nighttime of said day, the dwelling house (or outhouse, etc., describing the same) of one B, then and there found, did feloniously and burglariously enter without breaking (or, if it be in the daytime, use the words “in the daytime of said day,” etc., “did feloniously and burglariously break and enter,” etc.), with intent the goods and chattels of B therein found, feloniously and burglariously to take, steal and carry away; and then and there in the said dwelling house (or outhouse, etc.), one and one dollars in money, etc., of the value of $___, goods, chattels and money of the said B then and there found, did feloniously and burglariously take, steal and carry away, against the peace and dignity of the State.

And for entering without breaking, in the daytime, the same form shall be sufficient, without alleging therein that the act was done “burglariously.”

CHAPTER 33

(S. B. 1—By Mr. Palumbo)

[Passed January 29, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article one, chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the designation of daylight saving time as official time; and providing that daylight saving time commences on the last Sunday of April and terminates on the last Sunday of October.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article one, 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 1. THE GOVERNOR.

§5-1-25. Designation of daylight saving time as official time.
1 Daylight saving time shall be the statewide official
2 time, commencing at two o'clock antemeridian on the
3 last Sunday of April and terminating at two o'clock
4 antemeridian on the last Sunday of October; said time
5 shall apply to all public schools, institutions of higher
6 learning, agencies, departments and political subdivisions
7 of the state.

CHAPTER 34
(Com. Sub. for H. B. 743—By Mrs. Hartman and Mrs. Wehrle)

[Passed March 10, 1979; 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 two-a, relating to protection and relief for persons abused by members of their household; setting forth legislative findings and intent; providing definitions; relating to court jurisdiction; providing for procedures and relief; providing emergency provisions; providing for temporary protective orders; relating to enforcement and contempt penalties; providing exceptions; and providing that husband and wife may not refuse to testify on the ground that their communications with one another are privileged.
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 two-a, to read as follows:

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-1. Purpose.

The purpose of this article is to prevent continuing abuse of one family or household member at the hands of other family or household member. Nothing contained in this article shall be construed as affecting the abused party's rights of action or claims which are otherwise provided for in this code or by common law. An abusing party will remain subject to a damage claim or charges of criminal conduct. It is the intent of the Legislature to provide temporary and immediate relief for an abused party so that he or she may make rational decisions regarding their future, thus enabling them to initiate procedures for appropriate permanent remedies. It is further intended that no proceeding under this article shall be initiated during the pendency of a divorce action between the person seeking relief under the provisions of this article and the alleged defendant.


As used in this article, unless the context clearly requires otherwise:

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

(1) Attempting to cause or intentionally, knowingly or
recklessly causing bodily injury with or without a dangerous or deadly weapon.

(2) Placing by physical menace another in fear of imminent serious bodily injury.

(3) Sexually abusing a person under the age of eighteen years.

(b) “Family or household members” means spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, or other persons related by consanguinity or affinity.

(c) “Sexual abuse” shall have the same meaning as the definitions of “sexual assault” and “sexual abuse” in article eight-b, chapter sixty-one of this code.

<table>
<thead>
<tr>
<th>§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.</th>
</tr>
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<tbody>
<tr>
<td>Circuit courts and magistrate courts, as constituted under chapter fifty of this code, shall have concurrent jurisdiction over proceedings under this article. The complaining party’s right to relief under this article shall not be affected by his or her leaving the residence or household to avoid further abuse. Any petition filed under the provisions of this article shall be given priority over any other civil action before the court except actions in which trial is in progress, and shall be docketed immediately upon filing.</td>
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<tr>
<td>(1) A person may seek relief under this article for himself or herself, or any parent or adult household member may seek relief under this article on behalf of a minor child, by filing a verified petition alleging abuse by the respondent.</td>
</tr>
</tbody>
</table>

(2) The West Virginia supreme court of appeals shall prescribe the form to be used for preparing a petition under this article, and shall distribute such forms to the clerk of the circuit court of each county within the state.

(3) The respondent named in any petition alleging abuse may file a counterclaim or raise any affirmative defenses.
§48-2A-5. Temporary orders of court; hearings.

1  (1) Upon filing of a verified petition under this article, the
court may enter such temporary orders as it may deem neces-
sary to protect the complainant or minor children from abuse,
and, upon good cause shown, may do so ex parte without
the necessity of bond being given by the plaintiff. Clear and
convincing evidence of immediate and present danger of
abuse to the complainant or minor children shall constitute
good cause for purposes of this section. If the defendant is not
present at the proceeding, complainant or complainant’s legal
representative shall certify to the court in writing, the efforts
which have been made to give notice to the defendant or just
cause why notice should not be required. Following such pro-
ceeding, the court shall order a copy of the petition to be
served immediately upon the defendant, together with a copy
of any protective order issued pursuant to the proceeding,
notice setting forth the time and place of the full hearing and
a statement of the right of the defendant to be present and to
be represented by counsel. Such initial protective order shall
remain effective until a full hearing is held.

20  (2) Within five days following the issuance of the court’s
temporary order, a full hearing shall be held at which the
complainant must prove the allegation of abuse by a pre-
ponderance of the evidence, or such petition shall be dis-
missed. At such hearing, the court may make any protective
order or approve any consent agreement authorized by this
article.

27  (3) If a hearing is continued, the court may make or extend
such temporary orders as it deems necessary.


1  (1) The court may grant any protective order it deems
necessary to bring about a cessation of abuse of the com-
plainant or minor children, which may include:

4  (a) Directing the defendant to refrain from abusing the
complainant or minor children;

6  (b) Granting possession to the complainant of the residence
or household to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties;

(c) When the defendant has a duty to support the complainant or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the complainant of the residence or household to the exclusion of the defendant or by consent agreement allowing the defendant to provide suitable, alternate housing;

(d) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

(e) Ordering the defendant to pay to the complainant a sum for temporary support and maintenance of the abused party. This order is of a temporary nature and, on the thirtieth day following issuance of the order, that portion of the order requiring the defendant to pay support, becomes void unless the beneficiary of that order has filed a petition for divorce with a prayer for temporary support and maintenance under section thirteen, article two, chapter forty-eight of this code or has initiated an action for separate maintenance under section twenty-eight, article two, chapter forty-eight of this code. When there is a subsequent ruling on a petition for support under section thirteen, article two, chapter forty-eight of this code, that portion of the order requiring the defendant to pay support shall become void.

(2) Any protective order shall be for a fixed period of time not to exceed thirty days. The court may amend its order at any time upon subsequent petition filed by either party.

(3) No order under this article shall in any manner affect title to any real property.

Certified copies of any order made under the provisions of this article shall be issued to the plaintiff, the defendant and any law-enforcement agency having jurisdiction to enforce the order or agreement, including the city police, the county sheriff's office or local office of the state police.

1 (1) Upon violation of any order issued pursuant to this article, the court shall upon the filing of appropriate pleadings by or on behalf of any aggrieved party, issue an order to show cause why the person violating any provisions of the court's order should not be held in contempt of court and set a time for a hearing thereon within five days of the filing of said motion.

2 (2) Notwithstanding any other provision of law to the contrary, any sentence for contempt hereunder may include imprisonment up to thirty days and a fine not to exceed one thousand dollars or both.

§48-2A-8. Testimony of husband and wife.

1 Husband and wife are competent witnesses in such proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.

CHAPTER 35

(H. B. 873--By Mr. Dalton and Mr. Mathis)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the superintendent and the county board of education to have an office within five miles of the county seat.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, 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 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-7. Office.

1 The board shall provide a suitable office, within five miles
of the county seat, for use by the superintendent and the members of the board. The board shall supply the office with janitor service and with the necessary equipment and supplies.

CHAPTER 36
(Com. Sub. for H. B. 859—By Mr. Harden)

[Passed March 10, 1979; in effect ninety days from passage. 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 requiring a public hearing to be held on the preliminary operating budget of a county board of education, and requiring notice of the hearing to be published.

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; quorum; employment and assignment of teachers; public hearing concerning preliminary operating budget; publication of notice thereof; compensation of members; affiliation with state and national associations; dues and traveling expenses.

The board shall meet on the first Monday of January, except that in the year one thousand nine hundred eighty-two, and every year thereafter, the board shall meet on the first Monday of July, and upon the dates provided by law for the laying of levies, and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current
or next ensuing school year. At a meeting of the board, on or before the first Monday of May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers' last-known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.

Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.

In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not less than ten days after such budget has been made available to the public for inspection and within a reasonable time prior to the submission of said budget to the West Virginia board of education for approval and at such hearing reasonable time shall be granted to any person or persons who wish to speak regarding parts or all of such budget. Notice of such hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members may receive compensation at a rate not to exceed forty dollars per meeting attended. But they shall not receive pay for more than thirty-six meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.
When, by a majority vote of its members, a county board of education deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards of education out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.

CHAPTER 37

(Com. Sub. for S. B. 424—By Mr. Nelson)

[Passed March 10, 1979; in effect July 1, 1979. 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; and to amend and reenact section two-a, article four, chapter eighteen-a of said code, all relating to county boards of education and school personnel; providing for county boards of education to set school term opening and closing dates; providing that noninstructional days shall be rescheduled as instructional days in certain instances; and providing increases in the state supplemental salary schedule for teachers.

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; and that section two-a, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:
Chapter 18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; employment term; instructional term; extension of terms; levies; ages of persons to whom schools are open.

1 The board shall provide a school term for its schools which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils.

2 The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.

3 Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days. Instructional and noninstructional activities may be scheduled during the same employment day. The instructional term shall commence no earlier than the first Tuesday following Labor Day and shall terminate no later than the eighth day of June and shall not cover a period greater than two hundred seventy-eight calendar days.

4 Noninstructional days in the employment term may be used for curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. However, no more than four such noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

5 Notwithstanding any other provisions of the law to the
contrary, if the board has canceled instructional days
equal to the difference between the total instructional
days scheduled and one hundred eighty, each succeeding
instructional day canceled shall be rescheduled, utilizing
only the remaining noninstructional days, except holi-
days, following such cancellation, which are available
prior to the second day before the end of the employ-
ment term established by such county board.

Where the employment term overlaps a teacher's par-
ticipation in a summer institute or institution of higher
learning for the purpose of professional growth, the
teacher may substitute, with the approval of the county
superintendent, such participation for not more than four
of the noninstructional days of the employment term.

The board may extend the instructional term beyond
one hundred eighty-five instructional days provided the
employment term is extended an equal number of days.
If the state revenues and regular levies, as provided by
law, are insufficient to enable the board of education to
provide for the school term, the board may at any general
or special election, if petitioned by at least five percent
of the qualified voters in the district, submit the question
of additional levies to the voters. If at the election sixty
percent of the qualified voters cast their ballots in favor
of the additional levy, the board shall fix the term and
lay a levy necessary to pay the cost of the additional
term. The additional levy fixed by the election shall not
continue longer than five years without submission to the
voters. The additional rate shall not exceed by more
than one hundred percent the maximum school rate pre-
scribed by article eight, chapter eleven of the code, as
amended.

The public schools shall be open for the full instruc-
tional term to all persons who have attained the entrance
age as stated in section five, article two and section
eighteen, article five, chapter eighteen of this code: Pro-
vided, That persons over the age of twenty-one may enter
only those programs or classes authorized by the state
board of education and deemed appropriate by the county
board of education conducting any such program or class:
Provided, however, That authorization for such programs
or classes shall in no way serve to affect or eliminate
programs or classes offered by county boards of education
at the adult level for which fees are charged to support
such programs or classes.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2a. State supplemental salaries.

1 In addition to the amount of state minimum salary
2 received pursuant to section two of this article, on and
3 after the first day of July, one thousand nine hundred
4 seventy-nine, each teacher shall receive as a supplement
5 thereto the specific additional amount prescribed in this
6 section for such teacher's years of experience and educa-
7 tional level as hereinafter set forth. This salary supple-
8 ment and the increased fixed charges payments hereby
9 required shall be paid outside the West Virginia public
10 school support plan provided for in article nine-a, chapter
11 eighteen of the code.

STATE SUPPLEMENTAL SALARY SCHEDULE

<table>
<thead>
<tr>
<th>Educational Level</th>
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<tr>
<td>Years of Exp.</td>
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<td>3rd Class</td>
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</table>
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 eighteen-a, relating to limiting the number of pupils assigned to any one teacher in a primary grade or a kindergarten session.

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 eighteen-a, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.


County boards of education shall provide, by the school year one thousand nine hundred eighty-three—eighty-four, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each first, second and third grade classroom or classrooms for two or more grades, including one or more of the first, second and third grades, shall not have more than twenty-five pupils for each teacher of the grade or grades; further, county boards of education shall also provide by the school year one thousand nine hundred eighty-three—eighty-four, and thereafter sufficient personnel, equipment and facilities as will ensure that there will not be more than twenty pupils in each kindergarten session in any given school situation: Provided, That upon application of a county board of education to the state superintendent, and approval thereof by the state superintendent, as to each specific classroom for which the application is made, a county board may maintain the classroom, equipment and teacher for more than twenty-five pupils in primary grades,
or for more than twenty pupils in kindergarten, subject to the
approval of the state superintendent as may from time to time
be granted, in the school year one thousand nine hundred
eighty-three—eighty-four. Thereafter, all first, second and third
grade classes and any combined classes containing one or
more of the same shall have no more than twenty-five pupils
assigned to any one teacher; and all kindergarten sessions shall
have no more than twenty pupils assigned to any one teacher.

CHAPTER 39
(Com. Sub. for H. B. 863—By Mr. Speaker, Mr. See)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-b,
chapter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to authorizing
the board of regents to enter into reciprocal agreements with
other states providing financial assistance to their residents at­
tending institutions of higher learning in West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22B. STATE SCHOLARSHIP PROGRAM.

§18-22B-6. Recipients, awards and distribution of awards of scholar­
ships; authority of board of regents to enter into
reciprocal agreements with other states concerning scholarships.

The scholarship recipient shall be free to attend any ap­
proved institution of higher education in this state. The insti­
tution is not required to accept the scholarship recipient for
enrollment, but is free to exact compliance with its own ad­
mission requirements, standards and policies.
Scholarship grants shall be made to undergraduate students only.

Each scholarship is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. These may not necessarily be consecutive years and the scholarship will be terminated if the student receives his degree in a shorter period of time. Qualifications for renewal will include maintaining satisfactory academic standing, making normal progress toward completion of the course of study and continued eligibility, as determined by the commission.

Scholarship awards shall be made without regard to the applicant's race, creed, color, sex, national origin or ancestry; and in making scholarship awards, the commission shall treat all approved institutions of higher education in a fair and equitable manner. The commission from time to time shall identify areas of professional, vocational and technical expertise that are, or will be, of critical need in this state and, to the extent feasible, may direct scholarship grants to students that are pursuing instruction in those areas.

The board of regents may enter into reciprocal agreements with state scholarship and grant program agencies in other states which provide financial assistance to their residents attending institutions of higher education located in West Virginia. In connection therewith, the board of regents may authorize residents of West Virginia to use financial assistance under this article to attend institutions of higher education in such other states. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in section five of this article.

Scholarship awards shall be limited to the lesser of the payment of tuition and those related compulsory fees charged by an institution to all West Virginia undergraduate students, or an amount equal to the average state general fund support for each full-time equivalent student in the state four-year colleges for the preceding academic year as calculated by the board of regents.
Payments of scholarships shall be made directly to the institution.

In the event that a scholarship recipient transfers from one approved institution of higher education to another, his scholarship shall be transferable only with the approval of the commission.

Should the recipient terminate his enrollment for any reason during the academic year, the unused portion of the scholarship shall be returned to the commission by the institution according to the institution's own policy for issuing refunds.

CHAPTER 40

(H. B. 1541—By Mrs. Wahrle)

(Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section eight-a, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting college or university security officers authority to preserve law and order and assist local peace officers in traffic control on certain streets and roads adjacent to or passing through premises under the jurisdiction of the board of regents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-8a. Security officers; appointment; qualifications; authority; compensation and removal.

The West Virginia board of regents is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased by the state of West Virginia and under the jurisdiction of the
board of regents, subject to the conditions and restrictions hereinafter imposed. Before entering upon the performance of his duties as such security officer in any county, each person so appointed shall qualify therefor in the same manner as is required of county officers by the taking and filing an oath of office as required by article one, chapter six of this code and by posting an official bond as required by article two, chapter six of this code. No such person shall have authority to carry a gun or any other dangerous weapon until he shall have obtained a license therefor in the manner prescribed by section two, article seven, chapter sixty-one of this code.

It shall be the duty of any person so appointed and qualified, to preserve law and order on any premises under the jurisdiction of the board of regents and on any other street, road or thoroughfare, except controlled access and open country highways, adjacent to or passing through such premises, to which he may be assigned by the president of the college or university. For this purpose he shall as to offenses committed within any area so assigned have and may exercise all the powers and authority and shall be subject to all the responsibilities of a deputy sheriff of the county. The assignment of security officers to the duties authorized by this section shall not be deemed to supersede in any way the authority or duty of other peace officers to preserve law and order on such premises. In addition, the security officers appointed under provisions of this section shall have authority to assist local peace officers on public highways in the control of traffic in and around premises owned by the state of West Virginia whenever such traffic is generated as a result of athletic or other activities conducted or sponsored by a state college or university and when such assistance has been requested by the local peace officers.

The salary of all such security officers shall be paid by the board of regents. Each institution may furnish each such security officer with an official uniform to be worn while on duty and shall furnish and require each such officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying to his identity and to his authority as a security officer.
The board of regents may at its pleasure revoke the authority of any such officer and the president of the college or university shall report the termination of employment of any such security officer by filing a notice to that effect in the office of the clerk of each county in which his oath of office was filed, and in the case of officers licensed to carry a gun or other dangerous weapon by notifying the clerk of the circuit court of the county in which the license therefor was granted.

CHAPTER 41

(H. B. 817—By Mr. Prunty and Mr. Greer)

[Passed February 14, 1979; 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 eight-c, relating to the retention or nonretention of probationary faculty members by the board of regents; providing for notice of nonretention with the reasons therefor to be furnished upon request; and requiring a hearing when requested.

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 eight-c, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-8c. Notice to probationary faculty members of retention or nonretention; hearing.

1 The president of each state college, university or community college shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year, not later than the first day of March for
those probationary faculty members who are in their first academic year of service; not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and at least one year before the expiration of an appointment for those probationary faculty members who have been employed two or more years with the institution. Such notice to those probationary faculty members who will not be retained shall be by certified mail, return receipt requested. Upon request of the probationary faculty member not retained, the president of the state college, university or community college shall within ten days, and by certified mail, inform the probationary faculty member of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision may request a hearing from the board of regents within ten days after receiving the statement of reasons. The board of regents shall publish appropriate rules to govern the conduct of the appeal herein allowed. The board of regents shall, by such rules, prescribe either an unbiased committee of the board or appoint a hearing examiner to hear such appeals. Such hearing shall be held at the employing institution and within thirty days of the request. The rules of evidence shall not strictly apply. The faculty member shall be accorded substantive and procedural due process, including the right to produce evidence and witnesses and to cross-examine witnesses, and to be represented by counsel or other representative of his or her choice. If the committee of the board or the hearing examiner shall conclude that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year. The decision shall be rendered within thirty days after conclusion of the hearing. The term "probationary faculty members," shall be defined according to regulations promulgated by the board of regents.

The rights herein provided to probationary faculty members are in addition to, and not in lieu of, other rights afforded them by other rules and regulations of the board of regents.
AN ACT to amend and reenact section three, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increments paid to school principals for supervision of teachers.

Be it enacted by the Legislature of West Virginia:

That section three, 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-4-3. Salary increments for principals.

1 In addition to the present recommended salary schedules in each county for principals, the following schedule of monthly salary increments for principals shall be paid from state funds appropriated therefor, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred seventy-nine:

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<tr>
<th>No. of Teachers</th>
<th>Bachelor's Degree or Lesser Certification</th>
<th>Master's Degree</th>
<th>Principal's Certificate</th>
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<td>23.50</td>
<td>27.00</td>
<td>31.50</td>
</tr>
<tr>
<td>17</td>
<td>25.25</td>
<td>29.25</td>
<td>33.75</td>
</tr>
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</table>
AN ACT to amend and reenact section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum monthly pay scale for school auxiliary and service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

<table>
<thead>
<tr>
<th>YEARS OF EMPLOYMENT</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>0</td>
<td>538</td>
</tr>
<tr>
<td>1</td>
<td>551</td>
</tr>
<tr>
<td>2</td>
<td>564</td>
</tr>
<tr>
<td>CLASS TITLE</td>
<td>PAY GRADE</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Accountant I</td>
<td>D</td>
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<tr>
<td>Accountant II</td>
<td>E</td>
</tr>
<tr>
<td>Accountant III</td>
<td>F</td>
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<tr>
<td>Aide I</td>
<td>A</td>
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<td>Aide II</td>
<td>B</td>
</tr>
<tr>
<td>Aide III</td>
<td>C</td>
</tr>
<tr>
<td>Audiovisual Technician</td>
<td>C</td>
</tr>
<tr>
<td>Bus Operator</td>
<td>D</td>
</tr>
<tr>
<td>Buyer</td>
<td>F</td>
</tr>
<tr>
<td>Cabinetmaker</td>
<td>G</td>
</tr>
<tr>
<td>Cafeteria Manager</td>
<td>D</td>
</tr>
<tr>
<td>Carpenter I</td>
<td>E</td>
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<tr>
<td>Carpenter II</td>
<td>F</td>
</tr>
<tr>
<td>Chief Mechanic</td>
<td>G</td>
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<tr>
<td>Clerk I</td>
<td>B</td>
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<tr>
<td>Clerk II</td>
<td>C</td>
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<tr>
<td>Computer Operator</td>
<td>E</td>
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<tr>
<td>Cook I</td>
<td>A</td>
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<tr>
<td>Cook II</td>
<td>B</td>
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<tr>
<td>Cook III</td>
<td>C</td>
</tr>
<tr>
<td>Crew Leader</td>
<td>F</td>
</tr>
<tr>
<td>Custodian I</td>
<td>A</td>
</tr>
<tr>
<td>Custodian II</td>
<td>B</td>
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<tr>
<td>Custodian III</td>
<td>C</td>
</tr>
<tr>
<td>Custodian IV</td>
<td>D</td>
</tr>
<tr>
<td>Director or Coordinator of Services</td>
<td>H</td>
</tr>
<tr>
<td>Draftsman</td>
<td>D</td>
</tr>
<tr>
<td>Electrician I</td>
<td>F</td>
</tr>
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<td>Occupation</td>
<td>Code</td>
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<td>------</td>
</tr>
<tr>
<td>Electrician II</td>
<td>G</td>
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<tr>
<td>Electronic Technician I</td>
<td>F</td>
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<tr>
<td>Electronic Technician II</td>
<td>G</td>
</tr>
<tr>
<td>Executive Secretary</td>
<td>F</td>
</tr>
<tr>
<td>Food Services Supervisor</td>
<td>G</td>
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<tr>
<td>Foreman</td>
<td>G</td>
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<tr>
<td>General Maintenance</td>
<td>C</td>
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<tr>
<td>Glazier</td>
<td>D</td>
</tr>
<tr>
<td>Graphic Artist</td>
<td>D</td>
</tr>
<tr>
<td>Groundsman</td>
<td>B</td>
</tr>
<tr>
<td>Handyman</td>
<td>B</td>
</tr>
<tr>
<td>Heating and Air Conditioning Mechanic I</td>
<td>E</td>
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<tr>
<td>Heating and Air Conditioning Mechanic II</td>
<td>G</td>
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<tr>
<td>Heavy Equipment Operator</td>
<td>E</td>
</tr>
<tr>
<td>Inventory Supervisor</td>
<td>D</td>
</tr>
<tr>
<td>Key Punch Operator</td>
<td>B</td>
</tr>
<tr>
<td>Locksmith</td>
<td>G</td>
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<tr>
<td>Lubrication Man</td>
<td>C</td>
</tr>
<tr>
<td>Machinist</td>
<td>F</td>
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<tr>
<td>Maintenance Clerk</td>
<td>C</td>
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<tr>
<td>Mason</td>
<td>G</td>
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<tr>
<td>Mechanic</td>
<td>F</td>
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<tr>
<td>Mechanic Assistant</td>
<td>E</td>
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<tr>
<td>Office Equipment Repairman I</td>
<td>F</td>
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<tr>
<td>Office Equipment Repairman II</td>
<td>G</td>
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<tr>
<td>Painter</td>
<td>E</td>
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<tr>
<td>Plumber I</td>
<td>E</td>
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<tr>
<td>Plumber II</td>
<td>G</td>
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<tr>
<td>Printing Operator</td>
<td>B</td>
</tr>
<tr>
<td>Printing Supervisor</td>
<td>D</td>
</tr>
<tr>
<td>Programmer</td>
<td>H</td>
</tr>
<tr>
<td>Roofing/Sheet Metal Mechanic</td>
<td>F</td>
</tr>
<tr>
<td>School Bus Supervisor</td>
<td>E</td>
</tr>
<tr>
<td>Secretary I</td>
<td>D</td>
</tr>
<tr>
<td>Secretary II</td>
<td>E</td>
</tr>
<tr>
<td>Secretary III</td>
<td>F</td>
</tr>
<tr>
<td>Supervisor of Maintenance</td>
<td>H</td>
</tr>
<tr>
<td>Supervisor of Transportation</td>
<td>H</td>
</tr>
<tr>
<td>Switchboard Operator-Receptionist</td>
<td>D</td>
</tr>
<tr>
<td>Truck Driver</td>
<td>D</td>
</tr>
<tr>
<td>Warehouse Clerk</td>
<td>C</td>
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</tbody>
</table>
On and after the first day of July, one thousand nine hundred seventy-nine, the minimum monthly pay for each auxiliary and service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale” as set forth in this section, and the minimum monthly pay for each auxiliary and service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the “state minimum pay scale” set forth in this section.

CHAPTER 44
(S. B. 6—By Mr. Gainer)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to personal leave for teachers and other employees of county boards of education.

Be it enacted by the Legislature of West Virginia:

That section ten, 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-4-10. Personal leave for illness and other causes.

1 At the beginning of his employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction
thereof in the employee's employment term. Unused
leave shall be accumulative without limitation and shall
be transferable within the state. A change in job assign-
ment during the school year shall in no way affect the
employee's rights or benefits.

A regular full-time employee who is absent from
assigned duties due to accident, sickness, death in the
immediate family, or other cause authorized or approved
by the board, shall be paid his full salary from his regular
budgeted salary appropriation during the period which
he is absent, but not to exceed the total amount of leave
to which he is entitled: *Provided*, That each such em-
ployee shall be permitted three days of such leave annu-
ally, which may be taken without regard to the cause for
the absence, except that personal leave without cause
may not be taken on consecutive work days unless autho-
rized or approved by the employee's principal or im-
mediate supervisor, as the case may be: *Provided,
however*, That notice of such leave day shall be given
to the employee's principal or immediate supervisor, as
the case may be, at least twenty-four hours in advance,
except that in the case of sudden and unexpected circum-
stances, such notice shall be given as soon as reasonably
practicable; however, the use of such day may be denied
if, at the time notice is given, either fifteen percent of
the employees or three employees, whichever is greater,
under the supervision of the principal or immediate super-
visor, as the case may be, have previously notified the
principal or immediate supervisor of their intention to
use that day for such leave: *Provided further*, That such
leave shall not be used in connection with a concerted
work stoppage or strike. Where the cause for leave had
its origin prior to the beginning of the employment term,
the employee shall be paid for time lost after the start
of the employment term. If an employee should use per-
sonal leave which he has not yet accumulated on a
monthly basis and subsequently leave his employment,
he shall be required to reimburse the board for the salary
or wages paid to him for such unaccumulated leave.

The board may establish reasonable regulations for
reporting and verification of absence for causes; and if any error in reporting absences should occur it shall have authority to make necessary salary adjustments in the next pay after the employee has returned to duty or in the final pay if the absence should occur during the last month of his employment term. When such allowable absence does not directly affect the instruction of the pupils or when a substitute employee may not be required because of the nature of the work and the duration of the cause for the allowable absence of the regular employee, the administration, subject to board approval, may use its discretion as to the need for a substitute where limited absence may prevail. Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable.

If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

CHAPTER 45

(Com. Sub. for H. B. 929—By Mr. Albright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, 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 one-a; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section fifteen, relating to assaults by pupils upon teachers or other school personnel; temporary suspension and hearing; procedures, including notice and a formal hearing for longer suspension or expulsion; special consideration given to exceptional children; unlawful assault on a school employee and the penalty
therefor; unlawful battery on a school employee and the penalty therefor; and definition of school employee.

Be it enacted by the Legislature of West Virginia:

That article five, 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 one-a; and that article two, chapter sixty-one of said code, be amended by adding thereto a new section, designated section fifteen, all to read as follows:

Chapter
18A. School Personnel.
61. Crimes and Their Punishment.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Assaults by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; expulsion; exception.

(a) Any pupil who threatens to cause, attempts to cause, or causes a bodily injury to a school employee may be suspended or expelled from school in accordance with the provisions of this section.

(b) The actions of any pupil which may be grounds for his suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which such pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he shall conduct an informal hearing for the pupil as soon as practicable after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil may be suspended immediately and a hearing held as soon as practicable after the suspension.
The pupil and his parent or parents or custodial guardian, as the case may be, shall be given written notice by certified mail, return receipt requested, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he admits or denies the charges. If the pupil does not admit the charges, he shall be given an explanation of the evidence possessed by the principal and an opportunity to present his version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed persons to appear, the principal may suspend the pupil for a maximum of ten calendar days, including the time prior to such hearing, if any, for which the pupil has been excluded from school. If the principal believes a longer suspension or expulsion of the pupil is warranted in addition to a ten-day suspension, he shall so advise the parents and pupil, if present, and recommend such action to the superintendent of schools of the county in which the school where the pupil is enrolled is located.

(c) Any suspension shall be reported by the principal the same day it has been decided upon, in writing, to the county superintendent of schools of the county in which the school where the pupil is enrolled is located.

(d) If the principal recommends and the superintendent agrees that the suspension should be extended for beyond ten calendar days or that the pupil should be expelled from school, the superintendent shall immediately notify the county board of education of this recommendation. Upon receipt of such recommendation, the county board of education shall cause a written notice, which states the charges and the recommended disposition, to be served upon the pupil and his parent or parents or custodial guardian, as the case may be, advising such persons that unless a timely request is made for hearing, the recommended disposition shall become final. Such notice shall set forth a date and time at
which such hearing, if requested, shall be held, which date shall be within the ten-day period of suspension imposed by the principal. The notice shall further advise the persons to be noticed thereby that a request for hearing will not be granted unless received by the board more than twenty-four hours before the time proposed for hearing in the notice.

Upon timely receipt of a hearing request, the board of education shall hold the scheduled hearing to determine if the pupil should be reinstated or should have his suspension extended or should be expelled from school. At this hearing, the pupil may be represented by counsel, may call his own witnesses to verify his version of the incident and may confront and cross-examine witnesses supporting the charge against him. The hearing may be postponed for good cause shown by the pupil but he shall remain under suspension until after the hearing. The state board of education may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board of education either shall order the pupil reinstated immediately or at the end of his initial suspension or shall suspend the pupil for a further designated number of days or shall expel the pupil from the public schools of such county for a period of time not to exceed one school year.

(e) Notwithstanding the preceding provisions of this section, if a pupil has prior to the actions complained of been classified as or is eligible to be classified as an exceptional child, other than gifted, under the provisions of section one, article twenty, chapter eighteen of this code, special consideration shall be given to such pupil as hereinafter provided.

In any hearing held pursuant to this section, a pupil, his parent or custodial guardian may show in explanation of the actions complained of that such actions were the proximate result of a condition which has qualified or would qualify the pupil for a special educational program other than gifted. If the principal or board finds that such actions were the proximate result of such a condition, the pupil shall not be suspended or expelled pursuant to this section but the pupil
shall be forthwith referred to the appropriate personnel within the county school system for development of an individual learning program: Provided, That such pupil may be temporarily removed from school according to procedures employed by the school system for special education pupils if, in the opinion of the principal, such removal is necessary for his or her own protection or the protection of other pupils, teachers, school personnel or school property during all or some part of the time required to prepare such individual learning program.

(f) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(g) For the purpose of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise if, at the time of the commission of an act which would be grounds for suspension or expulsion under this section, such person is engaged in the performance of his duties or is commuting to or from his place of employment. For the purposes of this section, a "school employee" shall be deemed to include a student teacher.

(h) The remedies provided for in this section are cumulative.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15. Assault, battery on school employees; penalties.

(a) If any person commits an assault by unlawfully attempting to commit a violent injury to the person of a school employee or by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than five days nor more than six months and fined not less than fifty dollars nor more than one hundred dollars.

(b) If any person commits a battery by unlawfully and
 intentionally making physical contact of an insulting or provoking nature with the person of a school employee or by unlawfully and intentionally causing physical harm to a school employee, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than ten days nor more than twelve months and fined not less than one hundred dollars nor more than five hundred dollars.

(c) For the purposes of this section, “school employee” means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise if, at the time of the commission of any offense provided for in this section, such person is engaged in the performance of his duties or is commuting to or from his place of employment. For the purposes of this section, a “school employee” shall be deemed to include a student teacher.

CHAPTER 46
(S. B. 3—By Mr. Steptoe)

[Passed January 23, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections; persons entitled to vote; and providing that paupers are entitled to vote.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.
§3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and
municipalities in which they respectively reside. But no
person who has not been registered as a voter as required
by law, or who is a minor, or of unsound mind, or who
is under conviction of treason, felony or bribery in an
election, or who is not a bona fide resident of the state,
county or municipality in which he offers to vote, shall be
permitted to vote at such election while such disability
continues. Subject to the qualifications otherwise pre-
scribed in this section, however, a minor shall be per-
mitted to vote in a primary election if he will have
reached the age of eighteen years on the date of the
general election next to be held after such primary
election.

CHAPTER 47
(Com. Sub. for S. B. 102—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; 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 eight, relating to the
practice of electrology or electrolysis; defining terms; and re-
quiring the West Virginia board of health to promulgate rules
and regulations providing for the safe practice of electrology or
electrolysis.

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 eight, to read as follows:

ARTICLE 8. ELECTROLOGISTS.
§16-8-1. Definitions.
§16-8-2. Regulations by state board of health; minimum requirements.
§16-8-1. Definitions.

(a) "Electrology" means the art and practice relating
to the removing of hair from the normal skin of the body
by the application of an electric current to the hair papilla by means of a needle or needles, or by the application of an electronic tweezer having the electrical current flow through the hair and the follicle as in conventional electrolysis.

(b) "Electrolysis" means the process by which hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle, needles or electronic tweezer, whether the process employs direct electric current to the hair root or by means of shortwave alternating electric current.

§16-8-2. Regulations by state board of health; minimum requirements.

The West Virginia board of health shall adopt rules and regulations, as in their judgment are necessary, to provide for the safe practice of electrology or electrolysis in this state, and when promulgated, these rules and regulations shall be the minimum requirements to be enforced by local health authorities throughout the state. All rules and regulations shall be promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 48
(H. B. 1119—By Mr. Starcher)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform anatomical gift act; the manner of completing and executing such gifts; permitting licensed embalmers and funeral directors to enucleate an eye or eyes in certain cases; immunity from civil or criminal liability.
Be it enacted by the Legislature of West Virginia:

That section four, article nineteen, 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 19. UNIFORM ANATOMICAL GIFT ACT.


(a) A gift of all or part of the body under subsection (a), section two of this article may be made by will. The gift becomes effective upon certification of death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection (a), section two of this article may also be made by document other than a will. The gift becomes effective upon certification of death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor’s lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the West Virginia anatomical board will be considered to be the donee unless it declines to accept the gift, or unless there is urgent immediate need for a part of the body for transplant or other purposes in which case the gift may be accepted by the attending physician as donee upon or following certification of death. In case the anatomical board is considered the donee it shall be the duty of the person who has charge or control of the body, if he or she has knowledge of the gift, to give notice thereof to the anatomical board within twenty-four hours after such body comes under his or her control. Thereafter,
he or she shall hold the body subject to the order of the anatomical board for at least twenty-four hours after the sending of such notice. If the anatomical board makes a requisition for the body within the twenty-four-hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to West Virginia University or any other educational institution which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body. If the anatomical board shall not so act within the twenty-four-hour period, the gift may be accepted by the attending physician as donee upon or following certification of death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following certification of death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part, except that this prohibition shall not apply to the removing or transplanting of an eye or eyes.

(d) Notwithstanding subsection (b), section seven of this article, the donor may designate in his will, card or other document of gift, the surgeon or physician to carry out the appropriate procedures, or in the case of a gift of an eye or eyes, the surgeon or physician or the technician properly trained in the surgical removal of eyes to carry out the appropriate procedures. In the event of the nonavailability of such designee, or in the absence of a designation, the donee or other person authorized to accept the gift may employ or authorize for the purpose any surgeon or physician or in the case of a gift of an eye or eyes, any surgeon or physician or technician properly trained in the surgical removal of eyes or also in case of a gift of an eye or eyes, the donee or other person authorized to accept the gift may employ or authorize a licensed funeral director or embalmer licensed pursuant to article six, chapter thirty of this code who has successfully completed a course in enucleation approved by the medical licensing board of West Virginia to enucleate the eye or eyes for the gift after certification of death by a
physician. The qualified funeral director or embalmer shall properly care for the enucleated eye or eyes and promptly deliver the eye or eyes to the donee or other person authorized to accept the gift. A qualified funeral director or embalmer acting in accordance with the terms of this subsection shall not be liable, civilly or criminally for the eye enucleation.

(e) Any gift by a person designated in subsection (b), section two of this article shall be made by a document signed by him or made by his telegraphic, recorded telephonic or other recorded message.

(f) No particular words shall be necessary for donation of all or part of a body, but the following words, in substance, properly signed and witnessed, shall be legally valid for donations made pursuant to subsection (b) of this section:

"UNIFORM DONOR CARD"

I give: (a) . . . . any needed organs or parts;
(b) . . . . only the following organs or parts
Specify the organ(s) or part(s)
for the purposes of transplantation, therapy, medical research or education;
(c) . . . . my body for anatomical study if needed.

Limitation or special wishes, if any: . . . . . . . . . . . .
Signed by the donor and the following two witnesses in the presence of each other:

<table>
<thead>
<tr>
<th>Signature of Donor</th>
<th>Date of Birth of Donor</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>Date Signed</td>
<td>City and State</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Witness</td>
<td>Witness</td>
</tr>
</tbody>
</table>

This is a legal document under the Uniform Anatomical Gift Act or similar laws.”

CHAPTER 49

(Com. Sub. for H. B. 1166—By Mrs. Wehrle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing registered professional nurses and licensed practical nurses to be included among those who are qualified to accompany patients being transported in ambulances; and changing term of certification from two years to three years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates.

1 After the first day of January, one thousand nine hundred seventy-five, every ambulance, except those vehicles and
a aircraft exempted in section three of this article, shall have at least one of the following: Physician, osteopathic physician, registered professional nurse, licensed practical nurse qualified to render first aid, any state licensed health provider qualified to render first aid or mobile intensive care paramedic duly licensed to serve in such capacity under the laws of this state or one person who possesses a valid emergency medical service attendant certificate issued hereunder by the director in its patient compartment at all times when a patient is being transported.

In accordance with the provisions of chapter twenty-nine-a of this code, the state board shall promulgate rules regarding the age, training and physical requirements of emergency medical service attendants. As a minimum training requirement, every emergency medical service attendant shall have earned and possess a valid American Red Cross advanced first aid certificate, or an advanced first aid certificate issued by the Mine Safety and Health Administration, United States Department of Labor or the equivalent thereof; or have successfully completed the course on emergency care and transportation of the sick and injured recommended by the American academy of orthopedic surgeons or the equivalent thereof, before he is issued a certificate: Provided, That any member of a rescue unit organized and engaged in providing ambulance service prior to the first day of January, one thousand nine hundred seventy-five, which is operated by a rescue squad, fire department, police department, county or municipality of this state, who on that date is certified by the respective county health officer of the county wherein such unit is based, or, if there is no county health officer, by the county commission or governing body of the jurisdiction wherein such unit is based, that he is adequately trained and is capable of performing the service required of an emergency medical service attendant, shall be issued an original emergency medical service attendant certificate by the director upon his submitting proper application for such certificate. The state board may promulgate rules for emergency medical service attendants which exceed this minimum training requirement.
Any person desiring certification as an emergency medical service attendant shall apply to the director using forms and procedures prescribed by the director. Upon receipt of such application, the director shall determine if the applicant meets the requirements for certification and examine the applicant as, in his discretion, is necessary to make such determination. If it is determined that the applicant meets all of the requirements, the director shall issue an emergency medical service attendant certificate to the applicant. Emergency medical service attendant certificates issued by the director shall be valid for three years from the date of their issuance unless sooner suspended or revoked by the director. Certificates may be renewed for additional three-year periods after examination of the certificate holder and determination by the director that such holder meets the requirements established for emergency medical service attendants: Provided, That if any county health officer of any county, or, if there is no county health officer, the county commission or governing body of the jurisdiction concludes that any area of that jurisdiction has not been afforded the necessary training or equipment to implement this section, then this section shall not apply.

The director may issue a temporary emergency medical service attendant certificate to an applicant, with or without examination of the applicant, when it finds such issuance to be in the public interest. Unless sooner suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and it shall not be renewed thereafter unless it be in the public interest: Provided, That the expiration date of any such temporary certificate issued shall be extended until the holder of such certificate is afforded at least one opportunity to take an emergency medical care attendant training course within the general area where he serves as an emergency medical service attendant, but the expiration date shall not be extended for any longer period of time or for any other reasons.

There shall be no fee or other payment required of an applicant for original certification as an emergency medical service attendant, or renewal of such certificate.
AN ACT to amend and reenact section two, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public uses for which private property can be taken; underground storage areas and facilities.

Be it enacted by the Legislature of West Virginia:

That section two, article one, 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 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

1 The public uses for which private property may be
2 taken or damaged are as follows:
3
4 (a) For the construction, maintenance and operation
5 of railroad and traction lines (including extension, lateral
6 and branch lines, spurs, switches and sidetracks), canals,
7 public landings, wharves, bridges, public roads, streets,
8 alleys, parks and other works of internal improvement,
9 for the public use;
10
11 (b) For the construction and maintenance of telegraph,
12 telephone, electric light, heat and power plants, systems,
13 lines, transmission lines, conduits, stations (including
14 branch, spur and service lines), when for public use;
15
16 (c) For constructing, maintaining and operating pipe-
17 lines, plants, systems and storage facilities for manufac-
18 turing gas and for transporting petroleum oil, natural gas,
19 manufactured gas, and all mixtures and combinations
20 thereof, by means of pipes, pressure stations or otherwise,
21 (including the construction and operation of telephone
22 and telegraph lines for the service of such systems and
plants), and for underground storage areas and facilities, and the operation and maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be condemned and within the limits of the reservoir proposed to be utilized for such purposes, has ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial quantities, when for public use, the extent of the area to be acquired for such purpose to be determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall be construed to interfere with the power of the state and its political subdivisions to enact and enforce ordinances and regulations deemed necessary to protect the lives and property of citizens from the effects of explosions of oil or gas;

(d) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;

(e) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of the municipal corporation, and if not within a municipal corporation, in the name of the county court of the county in which the property is located;
(f) For the reasonable use by an incorporated company engaged in a public enterprise of which the state or any county or municipality is the sole or a part owner;

(g) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;

(h) For cemeteries, and the extension and enlargement of existing cemeteries: Provided, That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;

(i) For public schools, public libraries and public hospitals;

(j) For the construction and operation of booms (including approaches, landings and ways necessary for such objects), when for a public use;

(k) By the state of West Virginia for any and every other public use, object and purpose not herein specifically mentioned. By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the pur-view, and subject to the provisions of chapter one of this code;

(l) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: Provided, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand
therefor: \textit{Provided, however}, That in addition to all
other requisites by federal or state constitutions, statute
or common law required for the taking of private prop-er-
ty for public use, a further prerequisite and condition
precedent to the exercise of such taking of or damage to
private property for public use as in this subsection
hereinabove provided, is that the public service commis-
sion of this state, in an appropriate hearing and proceed-
ing on due notice to all interested persons, firms or cor-
porations, in accordance with the procedure now or here-
after established by statute and the regulations there-
under, shall have found that such pipeline transportation
of coal and its derivatives and all mixtures and combina-
tions thereof is required for the public convenience and
necessity, and that the public service commission of this
state shall not extend a certificate of convenience and
necessity or make such finding of public convenience and
necessity unless, in addition to the other facts required
to support such findings, it shall have been established
by the applicant therefor that the patents and other
similar rights under which the applicant proposes to
construct, maintain or operate such pipeline, plants, sys-
tems and storage facilities shall be and shall remain
equally available, insofar as said subsequent applicant
may determine such availability, upon fair and reason-
able terms, to other bona fide applicants seeking a cer-
tificate of convenience and necessity and finding of fact
for any other pipeline in West Virginia; for the purpose of
making the findings hereinbefore set forth the public
service commission shall have and exercise jurisdiction,
and that the aforesaid findings in this proviso above set
forth shall be subject to judicial review as in other public
service commission proceedings.

It is the intention of the Legislature in amending this
section by the addition of subdivision (1) as set forth
above to extend the right of eminent domain to coal pipe-
lines for public use; to provide for regulation of such coal
pipelines by the public service commission of this state
or the interstate commerce commission of the United
States of America, or both; to assure that such rights shall
be extended only to public utilities or common carriers as distinguished from private carriers or contract carriers; to make patents covering the same equally available to others on fair and reasonable terms; and to prevent monopolistic use of coal pipelines by any users thereof which would result in any appreciable economic detriment to others similarly situated by reasons of any such monopoly.

CHAPTER 51
(S. B. 492—By Mr. Palumbo)

[Passed March 5, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing minimum and maximum limits on the salary of the director of the purchasing division.

Be it enacted by the Legislature of West Virginia:

That section two, article one, 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 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.
§5A-1-2. Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the office of commissioner of finance and administration are hereby continued in the executive branch of state government. The commissioner shall be the chief executive officer of the department and director of the budget and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor. The commissioner shall serve at the will and pleasure of the governor. The annual compensa-
tion of the commissioner shall be as specified in section
two-a, article seven, chapter six of this code. There shall
be in the department of finance and administration a
budget division, a purchasing division and a general ser-
vice division. Each division shall be headed by a director
who shall be appointed by the commissioner. The office of
director of the purchasing division is hereby abolished,
and a new office of director of the purchasing division is
hereby created. No person shall be appointed director of
the purchasing division unless that person is at the time
of appointment a graduate of an accredited college or
university and shall have spent a minimum of ten of the
fifteen years immediately preceding his appointment em-
ployed in an executive capacity in purchasing for any
unit of government or for any business, commercial or
industrial enterprise. Any person appointed as director
of the division shall after the appointment be subject
to the provisions of article six, chapter twenty-nine of
this code.

CHAPTER 52
(H. B. 1248—By Mr. Warner)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter
thirty-eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact
section two, article five-b of said chapter, all relating to
obtaining a suggestee execution without first having an execu-
tion returned unsatisfied; and conforming said section to federal
statutory requirements.

Be it enacted by the Legislature of West Virginia:

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

5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

5B. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week thirty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record, the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty per centum thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than thirty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without
exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.

§38-5B-2. Application for suggestee execution against money from state, state agency or political subdivision; extent of lien and continuing levy; priority among suggestee executions.

A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of the same to the judgment debtor from the state, a state agency, or any political subdivision of the state. If satisfactory proof shall be made, by affidavit or otherwise, of such facts, and, where the execution is sought against salary or wages, of the fact that the amount due or to become due as salary or wages after the deduction of state and federal taxes exceeds in any week thirty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record, the clerk thereof, shall issue a suggestee execution against such money due or to become due to the judgment debtor, and there shall be entered on the face thereof the day and hour of issuance.

Such execution and the expenses thereof shall, when served by the officer to whom delivered for collection in the manner hereinafter provided, upon the state, a state agency or political subdivision from which such money is due or may thereafter become due to the judgment debtor, become a lien and continuing levy upon the sums due or to become due to the judgment debtor within one year after the issuance of the same (but not to exceed twenty per centum of the salary or wages due to such judgment debtor or reduce the amount received by him per week to an amount less than thirty times
the federal minimum hourly wage then in effect) unless sooner satisfied and paid, vacated or modified as hereinafter provided.

Where more than one suggestee execution shall have been issued pursuant to the provisions of this section against the same judgment debtor, they shall be satisfied in the order of priority in which they are served upon the state, state agency or political subdivision from which such money is due or shall become due. For purposes of determining such priority the time that an execution served by mail, as hereinafter provided shall be received, and not the time of admission of service shall control. In the case of two or more executions received in the same mail delivery priority shall be accorded the one first issued.

CHAPTER 53
(S. B. 211—By Mr. Boettner)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the welfare of handicapped children; formulation of an advisory board of physicians; setting the terms and requirements for board members; reporting the birth of a handicapped child; and cost of treatment of handicapped children.

Be it enacted by the Legislature of West Virginia:

That article four, 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 4. HANDICAPPED CHILDREN.
§49-4-1. Purpose.
§49-4-2. Children to whom article applies.
§49-4-3. Powers of state department.
§49-4-4. Advisory board of physicians.
§49-4-1. Purpose.

1 The purpose of this article is to provide for the continuation and development of services for handicapped children. The state department shall formulate and apply administrative policies concerning the care and treatment of physically handicapped children and shall cooperate with other agencies responsible for such care and treatment.

2 In the development of administrative policies, the state department shall cooperate with the United States department of health, education and welfare and shall comply with the regulations that agency prescribes under the authority of the "Social Security Act," and is hereby authorized to receive and expend federal funds for these services.

§49-4-2. Children to whom article applies.

1 It is the intention of this article that services for handicapped children shall be extended only to those children for whom adequate care, treatment and rehabilitation are not available from other than public sources.

§49-4-3. Powers of state department.

1 In the care and treatment of handicapped children the state department shall, so far as funds are available for the purpose:

4 (1) Locate handicapped children requiring medical, surgical, or other corrective treatment and provide competent diagnoses to determine the treatment required.

7 (2) Supply to handicapped children treatment, including hospitalization and aftercare leading to correction and rehabilitation.


§49-4-4. Advisory board of physicians.

1 The state commissioner shall designate a board of
seven physicians, of recognized ability, to serve in an advisory capacity in giving effect to the provisions of this article. These physicians shall be board certified specialists representing the various major medical components of the program. In addition to the seven board members, physicians representing other board specialities and representatives of paramedical professions such as nursing and medical social work may be appointed to serve the board in an ad hoc capacity at the commissioner’s discretion. The board members and ad hoc appointees shall serve without pay, except for reasonable expenses actually incurred. The members of the board shall be appointed for terms of four years, except that, as to the original appointments, three members shall be appointed for terms of four years each; two members shall be appointed for terms of three years each; two members shall be appointed for terms of two years each. As the term of each original appointee expires, his successor shall be appointed for a term of four years. The member shall serve until a successor is named. No member shall be eligible for appointment to more than two consecutive terms. Any vacancy shall be filled by appointment of the commissioner within sixty days from the date of vacancy.

The board shall:

(1) Consult with the state board and state commissioner with respect to the plans, policies and methods of the state department for giving effect to this article.

(2) Examine the credentials and confirm the appointment of physicians servicing the program.

(3) Examine the facilities and recommend the institutions in which handicapped children may be hospitalized by the state department.


Within thirty days after the birth of a child with a congenital deformity, the physician, midwife, or other person attending the birth shall report to the state department, on forms prescribed by them, the birth of such child.
6 The report shall be solely for the use of the state department and shall not be open for public inspection.

§49-4-6. Assistance by other agencies.

1 So far as practicable, the services and facilities of the state departments of health, education, vocational rehabilitation and corrections shall be available to the state department for the purposes of this article.


1 All payments from any corporation, association, program or fund providing insurance coverage or other payment for medicine, medical, surgical and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required for a handicapped child, shall be applied toward the total cost of treatment.

CHAPTER 54

(Be it enacted by the Legislature of West Virginia:)

AN ACT to amend and reenact section seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to power of the state board of health to promulgate rules and regulations; and providing that the board has no authority to promulgate rules and regulations restricting the subdivision or development of land used as single family dwelling units when total surface area of the land exceeds two acres.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-7. Promulgation of rules and regulations; references to board to mean director of health.

The state board of health shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof:

Provided, That no rules or regulations shall be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of said tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single family dwelling units. The provisions next above notwithstanding, nothing in this section shall be construed to abate the authority of the state health department to: (1) Restrict the subdivision or development of such tract for any more intense or higher density occupancy than such single family dwelling unit; (2) promulgate and enforce rules and regulations applicable to single family dwelling units for single family dwelling unit sanitary sewage disposal systems, or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply. The board shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and such other areas as it deems necessary to advise the board on rules and regulations. Such rules and regulations shall include, but not be limited to, the regulation of:

(1) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or pub-
lic assembly, or tendering to the public any item for human con-
sumption, and places where trades or industries are conducted;

(2) Occupational and industrial health hazards, the sanitary
conditions of streams, sources of water supply, sewerage facili-
ties and plumbing systems, and the qualifications of personnel
connected with any of such facilities, without regard to whether
such supplies or systems, are publicly or privately owned; and
the design of all water systems, plumbing systems, sewerage
systems, sewage treatment plants, excreta disposal methods,
swimming pools in this state, whether publicly or privately
owned;

(3) Food and drug standards, including cleanliness, pro-
scription of additives, proscription of sale, and other require-
ments in accordance with article seven of this chapter, as are
necessary to protect the health of the citizens of this state;

(4) The training and examination requirements for emer-
gency medical service attendants and mobile intensive care
paramedics; the designation of the health care facilities, health
care services, and the industries and occupations in the state
which must have emergency medical service attendants and
mobile intensive care paramedics employed, and the avail-
ability, communications, and equipment requirements with
respect thereto;

(5) The collection of data on health status, the health sys-
tem and the costs of health care;

(6) Other health-related matters which the department of
health is authorized to supervise, and for which the rule-
making authority has not been otherwise assigned.

Notwithstanding any other provision of this code to the
contrary, whenever in this code there is a reference to the
state board of health and such reference does not relate to the
making or promulgation of rules and regulations, it shall be
construed to mean and shall be a reference to the director of
the state department of health.
AN ACT to amend and reenact section five, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to having state director of health acquire vaccines, expanding list of vaccines to include polio, measles, mumps, rubella and pertussis, making the vaccines available to all citizens, deleting language concerning distribution of vaccine to drugstores, providing for distribution of vaccine by county and municipal health officers and requiring county and municipal health officers to provide the state director of health with a receipt for delivered vaccine.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§16-3-5. Distribution of free vaccine preventives of disease.

1 The state director of health shall acquire vaccine for the prevention of polio, measles, mumps, rubella, diphtheria, pertussis, tetanus, smallpox and other vaccine preventives of disease as may be deemed necessary or required by law, and shall distribute the same, free of charge, in such quantities as he may deem necessary, to county and municipal health officers, to be used by them for the benefit of, and without expense to the citizens within their respective jurisdictions, to check contagions and control epidemics.

2 The county and municipal health officers shall have the responsibility to properly store and distribute, free of charge, vaccines to private medical or osteopathic physicians within their jurisdictions to be utilized to check contagions and control epidemics: Provided, That the private medical or osteo-
15 pathic physicians shall not make a charge for the vaccine itself
16 when administering it to a patient. The county and municipal
17 health officers shall provide a receipt to the state director of
18 health for any vaccine delivered as herein provided.

CHAPTER 56
(Com. Sub. for S. B. 366—By Mr. Hanlon)

[Passed March 10, 1979; 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 five new sections, design­
ated sections six, seven, eight, nine and ten, relating to
establishing a system of strictly controlling research and
therapeutic uses of marihuana for the alleviation of nau­
sea and ill effects of cancer chemotherapy and the ill
effects of glaucoma by the department of health; defining
certain terms; establishing a controlled substance ther­
apeutic research program in the department of health;
establishing a patient qualification review board; appoint­
ment and reimbursement of members; and requiring a
report of the effectiveness of the program to the governor
and the Legislature.

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 five new sections, designated
sections six, seven, eight, nine and ten, to read as follows:

ARTICLE 5A. CANCER CONTROL.
§16-5A-7. Controlled substances therapeutic research program established;
participation.
§16-5A-8. Appointment of patient qualification review board; composition;
powers and duties.

As used in this article:

(1) "Director" means the director of the department of health, or his designee;

(2) "Marihuana" means marihuana, tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinol; and

(3) "Practitioner" means a physician licensed to prescribe and administer drugs which are subject to the controlled substances act.

§16-5A-7. Controlled substances therapeutic research program established; participation.

(a) There is established in the department of health the "controlled substances therapeutic research program." The program shall be administered by the director. The department shall promulgate rules and regulations necessary for the proper administration of the provisions of this article. In such promulgation, the department shall take into consideration all pertinent rules and regulations promulgated by the state board of pharmacy, the drug enforcement administration, the food and drug administration, and the national institute on drug abuse.

(b) Except as provided in subsection (c), section eight of this article, the controlled substances therapeutic research program shall be limited to cancer chemotherapy patients and glaucoma patients who are certified to the patient qualification review board by a practitioner as being involved in a life-threatening or sense-threatening situation and who are not responding to conventional controlled substances or where the conventional controlled substances administered have proven to be effective, but where the patient has incurred severe side effects.

§16-5A-8. Appointment of patient qualification review board; composition; powers and duties.

(a) The director shall appoint a patient qualification review board to serve at his pleasure. The patient qualification review board shall be comprised of:
(1) A physician licensed to practice medicine in West Virginia and certified by the American board of ophthalmology;

(2) A physician licensed to practice medicine in West Virginia and certified by the American board of internal medicine and also certified in the subspeciality of medical oncology or hematology; and

(3) A physician licensed to practice medicine in West Virginia and certified by the American board of psychiatry.

Members of the board may be reimbursed for their attendance at meetings at the rate of forty dollars per day.

(b) The patient qualification review board shall review all applicants for the controlled substances therapeutic research program and their licensed practitioners and certify their participation in the program. The board shall additionally certify practitioners and licensed pharmacies for participation regarding the distribution of marihuana pursuant to the provisions of section nine of this article.

(c) The patient qualification review board may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data has been presented by a practitioner to both the administrator and the board.


(a) The director shall apply to contract with the national institute on drug abuse or any federally registered distributor or manufacturer for receipt of marihuana pursuant to and in accordance with regulations promulgated by the national institute on drug abuse, the food and drug administration and the drug enforcement administration and pursuant to the provisions of this article.

(b) The director may cause such analyzed marihuana to be transferred to a certified licensed pharmacy for distribution to the certified patient upon the written prescription of the certified practitioner, pursuant to the provisions of this article.

The director, in conjunction with the patient qualification review board, shall report his findings and recommendations to the governor and the Legislature, regarding the effectiveness of the controlled substances therapeutic research program.

CHAPTER 57
(Com. Sub. for S. B. 185—By Mr. Huffman)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-f, relating to public disclosure of the financial position of certain health care facilities in the state of West Virginia; stating legislative findings and purposes; defining terms; relating to powers and duties of the director; providing for the promulgation of rules and regulations by the director; empowering the director to require financial reporting by health care facilities; publication of certain reports; right of inspection; providing for enforcement of reporting by the attorney general; penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5F. HEALTH CARE FACILITY FINANCIAL DISCLOSURE.
§16-5F-1. Legislative findings; purpose; intent of article.
§16-5F-2. Definitions.
§16-5F-3. General powers and duties of the director of the department of health regarding reporting and review.
§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.
§16-5F-5. Injunctions.
§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.
§16-5F-1. Legislative findings; purpose; intent of article.

1 (1) The West Virginia Legislature finds that the rising cost of health care and services provided by health care facilities are matters of vital concern to the people of this state and have a direct relationship to the ability of the people to obtain necessary health care.

2 (2) The citizens of this state have an inherent right to receive and have available to them health care programs and services which are capable of meeting individual needs.

3 (3) Such services should be available to all citizens in all regions of this state.

4 (4) The furnishing of health care services is an essential public service.

5 (5) The public has a right to know the financial position of hospitals and related facilities.

6 It is the purpose of this article to provide that the facilities covered herein shall make a public disclosure of their financial position and to bring about a review as to the reasonableness of the costs of health care services.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) “Annual report” means an annual financial report for the covered facility’s fiscal year prepared by an accountant or the covered facility’s auditor.

3 (2) “Department of health” means the West Virginia department of health.

4 (3) “Director” means the director of the department of health.

5 (4) “Covered facility” means any hospital or other health care facility with fifteen or more inpatient beds, whether publicly owned, operated for profit or operated as a not for profit facility and whether licensed, or unlicensed, but shall not include personal care homes as the same are defined in section two, article five-c, chapter
(5) "Rates" means all rates, fees or charges imposed by any covered facility for health care services.

(6) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or stored.

(7) "Health systems agency" means any agency created by Public Law 93-641.

§16-5F-3. General powers and duties of the director of the department of health regarding reporting and review.

(a) In addition to the powers granted to the director of the department of health elsewhere in this article, the director shall have the powers as indicated by this section and it shall be his duty to:

(1) Promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities contained in the provisions of this article.

(2) Require the filing of fiscal information by covered facilities relating to any matter affecting the cost of health care services in this state.

(3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed purposes of this article.

(b) The director shall also investigate and recommend to the Legislature whether other health care providers should be made subject to the provisions of this article.

(c) The director shall, not later than December thirty-first of each year, prepare and transmit to the governor and to the clerks of both houses of the Legislature a report containing the material and data as required by
section four of this article, based upon the most recent
data available.

(d) The director shall distribute an identical copy of
the published annual report and the report containing
the material and data as required by section four of this
article to the West Virginia health systems agency for
distribution to regional health advisory bodies or such
other official activities of the health systems agency.

§16-5F-4. Reports required to be published and filed; form of
reports; right of inspection.

(a) Every covered facility as defined in this article,
within one hundred twenty days after the end of each
covered facility's fiscal year, unless an extension be
granted by the director for good cause shown, shall be
required to file with the director and publish, as a Class I
legal advertisement, pursuant to section two, article three,
chapter fifty-nine of the code of West Virginia, in a
qualified newspaper published within the county within
which such covered facility is located, an annual report
prepared by the covered facility's auditor or an independ-
ent accountant.

Such report shall contain a complete statement of the
following:

(1) Assets and liabilities;
(2) Income and expenses;
(3) Profit or loss for the period reported;
(4) A statement of ownership for persons owning more
than five percent of the capital stock outstanding and the
dividends paid thereon, if any, and to whom paid for the
period reported unless the covered facility be duly regis-
tered on the New York stock exchange, American stock
exchange, any regional stock exchange, or its stock traded
actively over the counter. Such statement shall further
contain a disclosure of ownership by any parent company
or subsidiary, if applicable.

Such annual report shall also include a prominent no-
tice that the details concerning the contents of the adver-
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28 tisement, together with the other reports, statements and
29 schedules required to be filed with the director by the
30 provisions of this section, shall be available for public
31 inspection and copying at the director's office.

32 (b) Every covered facility shall also file with the direc-
33 tor the following statements, schedules or reports in such
34 form and at such intervals as may be specified by the
35 director, but at least annually:

36 (1) A statement of services available and services
37 rendered;

38 (2) A statement of the total financial needs of such
39 covered facility and the resources available or expected
40 to become available to meet such needs;

41 (3) A complete schedule of such covered facility's then
42 current rates with costs allocated to each category of
43 costs, in accordance with the rules and regulations as
44 promulgated by the director pursuant to section three
45 hereof;

46 (4) A copy of such reports made or filed with the fed-
47 eral health care financing administration, or its successor,
48 as the director may deem necessary or useful to accom-
49 plish the purposes of this article;

50 (5) A statement of all charges, fees or salaries for goods
51 or services rendered to the covered facility for the period
52 reported which shall exceed the sum of fifty-five thousand
53 dollars and a statement of all charges, fees or other sums
54 collected by the covered facility for or on the account of
55 any person, firm, partnership, corporation or other entity,
56 however structured, which shall exceed the sum of fifty-
57 five thousand dollars during the period reported;

58 (6) Such other reports of the costs incurred in render-
59 ing services as the director may prescribe. The director
60 may require the certification of specified financial reports
61 by the covered facility's auditor or independent accoun-
62 tant.

63 (c) Notwithstanding any provision to the contrary
64 herein, any data or material that is furnished to the direc-
tor pursuant to the provisions of subdivision four, subsection (b) of this section need not be duplicated by any other requirements of this section requiring the filing of data and material.

(d) No report, statement, schedule or other filing required or permitted to be filed hereunder shall contain any medical or individual information personally identifiable to a patient or a consumer of health services, whether directly or indirectly. All such reports, statements and schedules filed with the director under this section shall be open to public inspection and shall be available for examination during regular hours. Copies of such reports shall be made available to the public upon request and the director may establish fees reasonably calculated to reimburse the department for its actual costs in making copies of such reports.

Whenever further fiscal information is deemed necessary to verify the accuracy of any information set forth in any statement, schedule or report filed by a covered facility under the provisions of this article, the director shall have the authority to require the production of any records necessary to verify such information.

(f) From time to time, the director shall engage in or carry out analyses and studies relating to health care costs, the financial status of any covered facility or any other appropriate related matters, and make determinations of whether, in his opinion, the rates charged by a covered facility are economically justified.

§16-5F-5. Injunctions.

Whenever it appears that any covered facility, required to file or publish such reports, as provided in this article, has failed to file or publish such reports, the attorney general, upon the request of the director, may apply in the name of the state to, and the circuit court of the county in which such covered facility is located shall have jurisdiction for the granting of a mandatory injunction to compel compliance with the provisions of this article.
§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

Every covered facility failing to make and transmit to the director any of the reports required by law or failing to publish or distribute the reports as so required, shall forthwith be notified by the director and, if such failure continues for ten days after receipt of said notice, such delinquent facility shall be subject to a penalty of one thousand dollars for each day thereafter that such failure continues, such penalty to be recovered by the director through the attorney general in a civil action and paid into the state treasury to the account of the general fund. Review of any final judgment or order of the circuit court shall be by appeal to the West Virginia supreme court of appeals.

CHAPTER 58
(Com. Sub. for H. B. 795—By Mr. Martin, 35th District, and Mr. Moler)

[Passed February 23, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to the conducting of local option elections in counties having horse or dog racetracks into the question of permitting the holding of racing meets on Sundays; the procedures with respect to such elections; the form of the ballot or ballot labels with respect thereto; and the effect of the results of such election.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight-a, to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

PART V-A. LOCAL OPTION ELECTION CONCERNING SUNDAY RACING.

§19-23-8a. Local option election procedure; form of ballot or ballot labels; effect of such election.

(a) The county commission of any county in which a horse or dog race meeting is licensed under the provisions of section one of this article is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to whether the racing commission, notwithstanding any other provision of law, shall approve an application for a license which contains racing dates which fall on Sunday, if the application and the applicant are otherwise in compliance with the provisions of this article. Such approval shall limit Sunday racing to the hours between one p.m. and six p.m., local time.

(b) The county commission may, and upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, shall order an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county.

(c) No election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county shall be held at a general or primary election or within sixty days of any such election or in conjunction with any other election.

(d) The county commission shall give notice of such election by publication of such notice as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. Such notice shall be published within twenty-one consecutive days next preceding the date of said election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:
"Shall the West Virginia Racing Commission be authorized
to approve horse racing on Sundays between the hours of
one p.m. and six p.m. in __________ County, West Virginia?

☐ Yes ☐ No

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

In a county in which dog racing is conducted, the term
"dog racing" shall be substituted for "horse racing" on the
ballot or ballot label.

(f) Each individual qualified to vote in said county shall
be qualified to vote at the local option election. The votes in
said local option election shall be counted and returns made
by the election officers and the results certified by the com-
missioners of election to said county commission, which shall
canvass the ballots, all in accordance with the laws of this
state relating to general elections insofar as the same are ap-
licable. The county commission shall, without delay, can-
vass the votes cast at such local option election and certify
the results thereof to the racing commission, and shall trans-
mit a certified copy of said results to the secretary of state.

(g) The racing commission shall, after the certification of
the results of such local option election, thereafter approve an
application for a license which contains racing dates which fall
on Sunday if a majority of the voters voting at such local option
election vote yes, and on such racing dates all racing and other
activities authorized by this article shall be lawful, any other
provision of this code to the contrary notwithstanding.

(h) After an election to determine whether it is the will of
the voters of said county that racing be permitted on Sundays
in said county, another election on such issue shall not be held
for a period of five years.

(i) If at such election a majority of the voters of said coun-
ty shall approve racing on Sundays in said county, it shall be
lawful for the county commission, after five years from such
approval, and it shall be the duty of the county commission
upon a petition in writing of qualified voters residing within
the county equal to at least fifteen percent of the number of
persons who voted in that county in the next preceding general
election, which petition may be in any number of counterparts,
to order an election to determine whether it is the will of the
voters of said county that racing on Sundays be discontinued
in said county. The provisions of subsections (c), (d) and
(f) of this section shall govern said election. The ballot, or the
ballot labels where voting machines are used, shall have print-
ed thereon substantially the following:

"Shall racing of horses on Sunday in ..................................
County, West Virginia, be discontinued?

☐ Yes  ☐ No

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

In a county in which dog racing is conducted, the word "dogs"
shall be substituted for "horses" on the ballot or ballot label.
If it be the will of a majority of the voters of said county that
Sunday racing be discontinued in said county, it shall be the
duty of the racing commission thereafter, for a period of at
least five years and until a subsequent election shall otherwise
direct, to deny applications to race on Sundays in said county.

CHAPTER 59
(H. B. 871—By Mr. Speaker, Mr. See)

[Passed February 8, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chap-
ter thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to revising the autho-
rized limit on borrowing of the West Virginia housing develop-
ment fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article eighteen, chapter thirty-one of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


1. The aggregate principal amount of bonds and notes issued by the housing development fund shall not exceed five hundred million dollars outstanding at any one time: Provided,

4. That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the housing development fund or by exchange for any such refunding bonds or notes, shall be excluded.

CHAPTER 60

([S. B. 88—By Mr. Moreland and Mr. Hinkle])

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections two-a and two-b, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter forty-four of said code by adding thereto a new article, designated article six-a, relating to adoption of the "Uniform Management of Institutional Funds Act"; short title; definitions; appreciation; investment authority; delegation of management; standard of conduct; release of restrictions on use of investment; and uniformity of application and construction.

Be it enacted by the Legislature of West Virginia:

That sections two-a and two-b, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter forty-four of said code be amended by adding thereto a new article, designated article six-a, to read as follows:
ARTICLE 6A. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§44-6A-1. Short title.

§44-6A-2. Definitions.

§44-6A-3. Appropriation of appreciation; rule of construction.

§44-6A-4. Investment authority.


§44-6A-7. Release of restrictions on use or investment: application of cy pres doctrine.


§44-6A-1. Short title.

This article shall be known as the "Uniform Management of Institutional Funds Act."

§44-6A-2. Definitions.

The following words or phrases as used in this article shall have the meanings ascribed to them in this section, unless the context of this article clearly indicates otherwise:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(b) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund;

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(d) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is
24 added to the fund. The determination of historic dollar
25 value made in good faith by the institution is conclusive;
26 (e) "Institution" means an incorporated or unincor-
27 porated organization organized and operated exclusively
28 for educational, religious, charitable or other eleemosy-
29 nary purpose, or a governmental organization to the
30 extent that it holds funds exclusively for any of these
31 purposes;
32 (f) "Institutional fund" means a fund held by an in-
33 stitution for its exclusive use, benefit or purposes, but
34 does not include (i) a fund held for an institution by a
35 trustee that is not an institution or (ii) a fund in which
36 a beneficiary that is not an institution has an interest,
37 other than possible rights that could arise upon violation
38 or failure of the purposes of the fund.

§44-6A-3. Appropriation of appreciation; rule of construction.

1 (a) The governing board may appropriate for expen-
2 diture for the uses and purposes for which an endowment
3 fund is established so much of the net appreciation, re-
4 alized and unrealized, in the fair value of the assets of an
5 endowment fund over the historic dollar value of the fund
6 as is prudent under the standard established by section
7 six of this article. This section does not limit the authority
8 of the governing board to expend funds as permitted
9 under other law, the terms of the applicable gift instru-
10 ment, or the charter of the institution.

11 (b) Subsection (a) of this section does not apply if
12 the applicable gift instrument indicates the donor's in-
13 tention that net appreciation shall not be expended. A
14 restriction upon the expenditure of net appreciation may
15 not be implied from a designation of a gift as an endow-
16 ment, or from a direction or authorization in the appli-
17 cable gift instrument to use only "income," "interest,"
18 "dividends," or "rents, issues or profits," or "to preserve
19 the principal intact," or a direction which contains other
20 words of similar import. This rule of construction applies
21 to gift instruments executed or in effect before or after
22 the effective date of this article.
§44-6A-4. Investment authority.

1 In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

8 (a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

16 (b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

19 (c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

22 (d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.


1 Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in invest-
ment and reinvestment of institutional funds, (2) con-
tract with independent investment advisors, investment
counsel or managers, banks or trust companies, so to act,
and (3) authorize the payment of compensation for in-
vestment advisory or management services.


1 In the administration of the powers to appropriate
2 appreciation, to make and retain investments, and to
3 delegate investment management of institutional funds,
4 members of a governing board shall exercise ordinary
5 business care and prudence under the facts and circum-
6 stances prevailing at the time of the action or decision.
7 In so doing they shall consider long and short term needs
8 of the institution in carrying out its educational, religious,
9 charitable or other eleemosynary purposes, its present
10 and anticipated financial requirements, expected total
11 return on its investments, price level trends and general
12 economic conditions.

§44-6A-7. Release of restrictions on use or investment; appli-
cation of cy pres doctrine.

1 (a) With the written consent of the donor, the gov-
2 erning board may release, in whole or in part, a restric-
3 tion imposed by the applicable gift instrument on the
4 use or investment of an institutional fund.
5
6 (b) If written consent of the donor cannot be obtained
7 by reason of his death, disability, unavailability or im-
8 possibility of identification, the governing board may
9 apply in the name of the institution to the circuit court
10 of the county in which the institution is located for
11 release of a restriction imposed by the applicable gift
12 instrument on the use or investment of an institutional
13 fund. The attorney general shall be notified of the ap-
14 plication and shall be given an opportunity to be heard.
15 If the court finds that the restriction is obsolete, inap-
16 propriate or impracticable, it may by order release the
17 restriction in whole or in part. A release under this
18 subsection may not change an endowment fund to a fund
19 that is not an endowment fund.
20
21 (c) A release under this section may not allow a fund
20 to be used for purposes other than the educational, 
21 religious, charitable or other eleemosynary purposes of 
22 the institution affected. 
23 (d) This section does not limit the application of the 
24 doctrine of cy pres.

§44-6A-8. Uniformity of application; construction.

1 This article shall be so applied and construed as to 
2 effectuate its general purpose to make uniform the law 
3 with respect to the subject of this act among those states 
4 which enact it.

CHAPTER 61

(H. B. 1351—By Mr. Tompkins and Mr. Shiflet)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter 
seventeen-d of the code of West Virginia, one thousand nine 
hundred thirty-one, as amended; to amend and reenact sections 
two, seven, twelve and sixteen, article four of said chapter; to 
amend and reenact section thirty-one, article six, chapter 
thirty-three of said code; and to further amend said article six 
by adding thereto a new section, designated section thirty-one-a, 
all relating to the motor vehicle safety responsibility law; re-
quirements as to policy or bond; proof of financial responsi-
bility; motor vehicle liability insurance; policy limits; unin-
sured motorist coverage; conditions of recovery; rights and 
liabilities of insurer; rates. 

Be it enacted by the Legislature of West Virginia: 

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

Chapter

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article


ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-5. Requirements as to policy or bond.

1 (a) No policy or bond shall be effective under section four of this article unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subsection (b) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty thousand dollars because of bodily injury to or death of one person in any one accident, and subject to said limit for one person, to a limit of not less than forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

(b) No policy or bond shall be effective under section four of this article with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it shall execute a power of attorney authorizing the commissioner to
accept service on its behalf of notice or process in any action
upon such policy or bond arising out of such accident.

(c) Upon receipt of notice of such accident from the com-
missioner, the insurance company or surety company named in
such notice shall notify the commissioner in such manner as
he may require in case such a policy or bond was not in effect
at the time of such accident.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE
FUTURE.

§17D-4-2. “Proof of financial responsibility” construed.

§17D-4-7. Payment sufficient to satisfy requirements.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of
policy.

§17D-4-16. Money or securities as proof.

§17D-4-2. “Proof of financial responsibility” construed.

The term “proof of financial responsibility” as used in this
chapter shall mean: Proof of ability to respond in damages for
liability, on account of accident occurring subsequent to the
effective date of said proof, arising out of the ownership, oper-
ation, maintenance or use of a motor vehicle, trailer or semi-
trailer in the amount of twenty thousand dollars because of
bodily injury to or death of one person in any one accident,
and, subject to said limit for one person, in the amount of
forty thousand dollars because of bodily injury to or death of
two or more persons in any one accident, and in the amount of
ten thousand dollars because of injury to or destruction of
property of others in any one accident.

§17D-4-7. Payment sufficient to satisfy requirements.

(a) Judgments herein referred to shall, for the purpose of
this chapter only, be deemed satisfied:

(1) When twenty thousand dollars has been credited upon
any judgment or judgments rendered in excess of that amount
because of bodily injury to or death of one person as the
result of any one accident; or

(2) When, subject to such limit of twenty thousand dollars
because of bodily injury to or death of one person, the sum of
forty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Provided, however, that payments made in settlement of any claims because of bodily injury, death or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of policy.

(a) A “motor vehicle liability policy” as said term is used in this chapter shall mean an “owner’s policy” or an “operator’s policy” of liability insurance certified as provided in section ten or section eleven of this article as proof of financial responsibility, and issued, except as otherwise provided in section eleven, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner’s policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is thereby to be granted; and

(2) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one
person, forty thousand dollars because of bodily injury to or
death of two or more persons in any one accident, and ten
thousand dollars because of injury to or destruction of prop-
erty of others in any one accident.

(c) Such operator's policy of liability insurance shall insure
the person named as insured therein against loss from the
liability imposed upon him by law for damages arising out of
the use by him of any motor vehicle not owned by him, within
the same territorial limits and subject to the same limits of
liability as are set forth above with respect to an owner's
policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name
and address of the named insured, the coverage afforded by
the policy, the premium charged therefor, the policy period,
and the limits of liability, and shall contain an agreement or
be endorsed that insurance is provided thereunder in accor-
dance with the coverage defined in this chapter as respects
bodily injury and death or property damage, or both, and is
subject to all the provisions of this chapter.

(e) Such motor vehicle liability policy need not insure any
liability under any workmen's compensation law nor any
liability on account of bodily injury to or death of an employee
of the insured while engaged in the employment, other than
domestic, of the insured, or while engaged in the operation,
maintenance or repair of any such vehicle nor any liability
for damage to property owned by, rented to, in charge of, or
transported by the insured.

(f) Every motor vehicle liability policy shall be subject to
the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the
insurance required by this chapter shall become absolute
whenever injury or damage covered by said motor vehicle lia-
bility policy occurs; said policy may not be canceled or annulled
as to such liability by an agreement between the insurance
carrier and the insured after the occurrence of the injury or
damage; no statement made by the insured or on his behalf
and no violation of said policy shall defeat or void said policy.
(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision two, subsection (b) of this section.

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle policy shall be deemed to fulfill the requirements for such a policy.
§17D-4-16. Money or securities as proof.

(a) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him forty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of forty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle, trailer or semitrailer after such deposit was made.

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

§33-6-31a. Rates charged for uninsured motorist coverage.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the department of motor vehicles of this state, unless it
shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his spouse against liability for death or bodily injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowned motor vehicles.

(b) Nor shall any such policy or contract be so issued or delivered unless it shall contain an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of the code of West Virginia, as amended from time to time: Provided, That such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle up to an amount of one hundred thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of fifty thousand dollars because of injury to or destruction of property of others in any one accident: Provided, however, That such endorsement or provisions may exclude the first three hundred dollars of property damage resulting from the negligence of an uninsured motorist.

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom, and the term "named in-
48 "insured" shall mean the person named as such in the declara-
49 tions of the policy or contract and shall also include such per-
50 son's spouse if a resident of the same household, and the term
51 "insured" shall mean the named insured, and, while resident
52 of the same household, the spouse of any such named insured,
53 and relatives of either, while in a motor vehicle or otherwise,
54 and any person, except a bailee for hire, who uses, with the
55 consent, expressed or implied, of the named insured, the motor
56 vehicle to which the policy applies or the personal representa-
57 tive of any of the above; and the term "uninsured motor
58 vehicle" shall mean a motor vehicle as to which there is no
59 (i) bodily injury liability insurance and property damage lia-
60 bility insurance both in the amounts specified by section two,
61 article four, chapter seventeen-d, as amended from time to
time, or (ii) there is such insurance, but the insurance com-
62 pany writing the same denies coverage thereunder, or (iii) there
63 is no certificate of self-insurance issued in accordance with the
64 provision of section two, article six, chapter seventeen-d of the
65 code of West Virginia. A motor vehicle shall be deemed to be
66 uninsured if the owner or operator thereof be unknown:
67 Provided, That recovery under the endorsement or provisions
68 shall be subject to the conditions hereinafter set forth.
69
70 (d) Any insured intending to rely on the coverage required
71 by subsection (b) of this section shall, if any action be insti-
72 tuted against the owner or operator of an uninsured motor
73 vehicle, cause a copy of the summons and a copy of the com-
74 plaint to be served upon the insurance company issuing the
75 policy, in the manner prescribed by law, as though such in-
76 surance company were a named party defendant; such com-
77 pany shall thereafter have the right to file pleadings and to
78 take other action allowable by law in the name of the owner,
or operator, or both, of the uninsured motor vehicle or in its
79 own name.
80
81 Nothing in this subsection shall prevent such owner or
82 operator from employing counsel of its own choice and taking
83 any action in his own interest in connection with such pro-
84 ceeding.
85
86 (e) If the owner or operator of any motor vehicle which
87 causes bodily injury or property damage to the insured be
unknown, the insured, or someone in his behalf, in order for
the insured to recover under the uninsured motorist endorse-
ment or provision, shall:

(i) Within twenty-four hours after the insured discover, and
being physically able to report the occurrence of such accident,
the insured, or someone in his behalf, shall report the acci-
dent to a police, peace or judicial officer, or to the commis-
sioner of motor vehicles, unless the accident shall already have
been investigated by a police officer; and

(ii) Notify the insurance company, within sixty days after
such accident, that the insured or his legal representative has
a cause or causes of action arising out of such accident for
damages against a person or persons whose identity is unknown
and setting forth the facts in support thereof; and, upon writ-
ten request of the insurance company communicated to the in-
sured not later than five days after receipt of such statement,
shall make available for inspection the motor vehicle which
the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle, which
caused the bodily injury or property damage, whose operator
is unknown, was a "hit and run" motor vehicle, meaning a
motor vehicle which causes damage to the property of the in-
sured arising out of physical contact of such motor vehicle
therewith, or which causes bodily injury to the insured arising
out of physical contact of such motor vehicle with the insured
or with a motor vehicle which the insured was occupying at the
distance of the accident. If the owner or operator of any motor
vehicle causing bodily injury or property damage be unknown,
an action may be instituted against the unknown defendant as
"John Doe," in the county in which the accident took place or
in any other county in which such action would be proper
under the provisions of article one, chapter fifty-six of this
code; service of process may be made by delivery of a copy of
the complaint and summons or other pleadings to the clerk of
the court in which the action is brought, and service upon
the insurance company issuing the policy shall be made as
prescribed by law as though such insurance company were a
party defendant. The insurance company shall have the right
to file pleadings and take other action allowable by law in the
name of John Doe.

(f) An insurer paying a claim under the endorsement or
provisions required by subsection (b) of this section shall be
subrogated to the rights of the insured to whom such claim
was paid against the person causing such injury, death or dam-
age to the extent that payment was made. The bringing of an
action against the unknown owner or operator as John Doe
or the conclusion of such an action shall not constitute a bar
to the insured, if the identity of the owner or operator who
caused the injury or damages complained of, becomes known,
from bringing an action against the owner or operator there-
tofore proceeded against as John Doe. Any recovery against
such owner or operator shall be paid to the insurance company
to the extent that such insurance company shall have paid the
insured in the action brought against such owner or operator
as John Doe, except that such insurance company shall pay its
proportionate part of any reasonable costs and expenses in-
curred in connection therewith, including reasonable attorney's
fees. Nothing in an endorsement or provision made under this
subsection, nor any other provision of law, shall operate to
prevent the joining, in an action against John Doe, of the owner
or operator of the motor vehicle causing injury as a party de-
fendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions shall contain any
provision requiring arbitration of any claim arising under any
such endorsement or provision, nor may anything be required
of the insured except the establishment of legal liability, nor
shall the insured be restricted or prevented in any manner
from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section
shall not apply to any policy of insurance to the extent that it
covers the liability of an employer to his employees under any
workmen's compensation law.

(i) The commissioner of insurance shall formulate and re-
quire the use of standard policy provisions for the insurance
required by this section, but use of such standard policy pro-
visions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section shall not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein shall prevent any insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

§33-6-31a. Rates charged for uninsured motorist coverage.

1 Rates charged by insurers for the minimum uninsured motorist coverage required under the provisions of section thirty-one, of this article, shall be separate from the rates charged by an insurer for the optional limits afforded the policyholder under said section.

CHAPTER 62

(S. B. 408—By Mr. Rogers)

[Passed March 8, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine-a, all relating to allowing a
domestic insurer to be examined; requiring a foreign insurance company which is examined be charged for the costs of the examinations; providing that compensation of employees of the department of insurance shall be at a rate set by the commissioner, and that compensation of other personnel be at a rate approved by the commissioner; providing a credit for a domestic insurance company against its premium tax in the amount of the cost of its examination; definition of insurance company.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-9a. Premium tax credit.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The commissioner or his accredited examiners shall, at such times as he deems necessary, but at least once each three years, visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner at such times as he deems necessary may cause an examination to be conducted of any foreign or alien insurer licensed to transact insurance in this state; personnel conducting an examination of either a domestic or foreign insurer shall be compensated for each day worked at a rate set by the commissioner. Such personnel shall also be reimbursed for their travel and living expenses at the rate set by the commissioner. Personnel who are appointed by the commissioner, but are not employees of the department of insurance, shall be compensated for their work and travel and living expenses at rates approved by the commissioner, or as other-
wise provided by law. If the laws of another state require or permit the insurance department or other authority thereof to make examinations of insurance companies of this state at the expense of such companies, the expenses of the commissioner in making an examination of an insurance company of such other state shall be charged to and collected from such company in the manner prescribed by the commissioner. The commissioner shall provide each company with an itemized statement of the expenses incurred in conducting the examination and shall certify a copy of such statement to the treasurer of the state. Upon receipt of the commissioner’s statement, the company shall remit the amount thereof to the commissioner who shall remit that amount to the treasurer of the state for deposit in the general fund of the state of West Virginia. As used in this section “expenses” means: (1) The entire compensation for each day worked by all personnel, including those who are not employees of the department of insurance, the conduct of such examination calculated as hereinbefore provided; (2) travel and living expenses of all personnel, including those who are not employees of the department of insurance, directly engaged in the conduct of such examination, calculated at the rates as hereinbefore provided for; (3) all other incidental expenses incurred by or on behalf of such personnel in the conduct of such authorized examination. The commissioner shall make a full written report of each such examination of an insurer, certified to by the commissioner or the examiner in charge of such examination. The commissioner shall furnish a copy of the report to the insurer examined not less than ten days prior to filing the same in his office. If such insurer so requests in writing, within such ten-day period, the commissioner shall consider the objections of such insurer to the report as proposed, and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against the insurer examined, or its officers or agents, and shall be prima facie evidence of the
facts stated therein. The commissioner or his examiners may at any time testify and offer proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served or filed in the commissioner's office. The examination of an alien insurer shall be limited to its United States business. In lieu of making his own examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of the state of domicile of a foreign insurer or the state of entry into the United States of an insurer.

(b) The commissioner may also cause to be examined at such times as he deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker or solicitor licensed by this state.

(c) For such purposes the commissioner, his deputies and employees shall have free access to all books, records, papers, documents and correspondence of all such insurers (whether domestic, foreign or alien), agents, brokers and solicitors wherever such books, records, papers, documents and records are situate.

(d) The commissioner may revoke the license of any such insurer, agent, broker or solicitor who refuses to submit to such examination.

(e) The commissioner may withhold from public inspection any examination or investigation report for such time as he may deem prudent, but no such report shall be withheld from public inspection for longer than ninety days after the same has been filed.

§33-2-9a. Premium tax credit.

1 Any insurance company which qualifies for a credit against the premium tax levied by section fourteen-a, article three of this chapter shall be allowed an additional credit against such premium tax for the cost of any examination incurred pursuant to the previous sec-
Such credit for the cost of the examination shall be taken during the taxable year immediately following payment for the cost of examination unless the commissioner orders a pro rata credit over a period not to exceed five taxable years. For purposes of this section, "insurance company" includes any domestic or foreign stock company, mutual company, mutual protective association, farmers mutual fire companies, fraternal benefit society, reciprocal or inter-insurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, and nonprofit dental care corporation, regardless of the type of coverage written, benefits provided or guarantees made by each.

CHAPTER 63
(H. B. 1542—By Mr. Karras)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to automobile liability insurance policies and the effect of nonrenewal of a policy which has been in effect for two consecutive years or longer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

1. No insurer shall fail to renew an outstanding automobile liability insurance policy unless such nonrenewal is preceded
by at least forty-five days of advance notice to the named insured of such insurer's election not to renew such policy: *Provided, That subject to this section, nothing contained in this article shall be construed so as to prevent an insurer from refusing to issue an automobile liability policy upon application to such insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan: Provided, however, That an insurer may not fail to renew an outstanding automobile liability insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his operator's license suspended or revoked during the policy period; or

(2) Is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle;

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;
(2) Negligent homicide arising out of the operation of a
motor vehicle;

(3) Operating a motor vehicle while under the influence of
intoxicating liquor or of any narcotic drug;

(4) Leaving the scene of a motor vehicle accident in which
the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a
motor vehicle;

(6) Making false statements in an application for a motor
vehicle operator’s license;

(7) A second violation, committed within a period of twelve
months, of any moving traffic violation which constitutes a
misdemeanor, whether or not the violations were repetitions
of the same offense or were different offenses;

(f) The named insured or any other operator has had a
second at-fault motor vehicle accident within a period of
twelve months.

Nonrenewal of such policy for any reason is subject to
hearing and review as provided in section five of this article.
Cost of the hearing shall be assessed against the losing party
but shall not exceed seventy-five dollars.

CHAPTER 64

(H. B. 854—By Mr. Wright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; group life insurance; debtor groups; and increasing the amount of insurance permitted on the life of a debtor from ten thousand dollars to twenty thousand dollars.
Be it enacted by the Legislature of West Virginia:

That section three, 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.

§33-14-3. Debtor groups.

The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable either (i) in installments, or (ii) in one sum at the end of a period not in excess of eighteen months from the initial date of debt, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term “debtors” shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. No debtor shall be eligible unless the indebtedness constitutes an obligation to repay which is binding upon him during his lifetime, at and from the date the insurance becomes effective upon his life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor’s funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be
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33 derived from the collection of such identifiable charges must
34 insure all eligible debtors, or all except any as to whom
35 evidence of individual insurability is not satisfactory to the
36 insurer.

37 (c) The policy may be issued only if the group of eligible
38 debtors is then receiving new entrants at the rate of at least
39 one hundred persons yearly, or may reasonably be expected
40 to receive at least one hundred new entrants during the first
41 policy year, and only if the policy reserves to the insurer the
42 right to require evidence of individual insurability if less than
43 seventy-five percent of the new entrants become insured.
44 The policy may exclude from the classes eligible for insurance
45 classes of debtors determined by age.

46 (d) The amount of insurance on the life of any debtor
47 shall at no time exceed the amount owed by him which is
48 repayable in installments to the creditor, or twenty thousand
49 dollars, whichever is less. Where the indebtedness is repayable
50 in one sum to the creditor, the insurance on the life of any
51 debtor shall in no instance be in effect for a period in excess
52 of eighteen months except that such insurance may be con-
53 tinued for an additional period not exceeding six months in
54 the case of default, extension or recasting of the loan. The
55 amount of the insurance on the life of any debtor shall at
56 no time exceed the amount of the unpaid indebtedness, or
57 twenty thousand dollars, whichever is less.

58 (e) The insurance shall be payable to the policyholder.
59 Such payment shall reduce or extinguish the unpaid indebted-
60 ness of the debtor to the extent of such payment.

CHAPTER 65
(Com. Sub. for S. B. 559—By Mr. Rogers)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, ten and
twelve, article one, chapter twelve of the code of West
Virginia. one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three and four, article two of said chapter; to amend and reenact section one, article three of said chapter; and to amend and reenact sections two, nine, eleven and thirteen, article six of said chapter, all relating to the investment of state funds; depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by the treasurer; depositories for interest earning deposits; qualifications; accounts of depositories; settlements with depositories; reports showing depository balances; reconciliation of reports; when the treasurer may make funds available to the board of investments; record of receipts; regulations governing deposits; credit to state funds; exceptions; deposit by treasurer; duty of depositories; payment from treasury; checks; definitions; permissible investments; apportionment of interest bearing deposits among state depositories; interest rates on such deposits.

Be it enacted by the Legislature of West Virginia:

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

Article

1. State Depositories.

2. Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.

3. Appropriations and Expenditures.

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.

§12-1-3. Depositories for interest earning deposits; qualifications.
§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

§12-1-12. When treasurer may make funds available to the board of investments; depositories outside the state.

§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 national banks in this state which shall serve as depositories for all state funds placed in demand deposits. Any such state or national bank shall, upon request to such board, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter: Provided, That notwithstanding any provision of this article to the contrary, no state funds may be deposited in any bank which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in farm, single or multi-family residential units. For the purpose of making the foregoing calculation, the balances due the bank on the following loans shall be given effect: (1) qualifying residential loans held by the bank; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal, or local governments; and (4) qualifying loans originated and serviced by the bank but owned by an out-of-state investor. The calculation of the percent of total loans made by a bank in farm, single or multi-family residential units shall be made from the average daily balance of total loans and qualifying residential loans for the period being reported.

Demand deposit accounts shall consist of receipt, disbursement and investment accounts. Receipt accounts shall be those accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency, thereof.
Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the treasurer or board of investments for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof or to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

The board of investments shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, concerning depositories for receipt accounts and investment accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The board of investments shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state: Provided, however, That funds in disbursement accounts shall be proportionately distributed among the following categories of such depositories, based upon the total assets of such depository:

(a) Depositories whose total assets are not greater than
twenty-five million dollars; (b) depositories whose total assets are greater than twenty-five million dollars but not greater than fifty million dollars; or (c) depositories whose total assets are greater than fifty million dollars. The board shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, prescribing the procedures and criteria for such bidding and selection. It shall, in its invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost: Provided, further, That the depositories for such disbursement accounts shall be determined by the board through competitive bidding separately for each category of depositories created in this section.

The amount of money needed for current operation purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury, in cash or in disbursement accounts with banks designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated.

§12-1-3. Depositories for interest earning deposits; qualifications.

1 Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the board of investments, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term “interest earning deposits” includes certificates of deposit. The board of investments, acting through the treasurer, shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of such deposits, all in accordance with the provi-
sions of article six of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of one hundred thousand dollars: Provided, however, That notwithstanding any provision of this article to the contrary, no such interest earning deposits may be deposited in any depository which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in farm, single or multi-family residential units. For the purpose of making the foregoing calculation, the balances due the depository on the following loans shall be given effect: (1) Qualifying residential loans held by the depository; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal or local governments; and (4) qualifying loans originated and serviced by the depository but owned by an out-of-state investor. The calculation of the percent of total loans made by a depository in farm, single or multi-family residential units shall be made from the average daily balance of total loans and qualifying residential loans for the period being reported.

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

1 The treasurer shall keep in his office a record showing the account of each depository, under which account entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal, and the balance on deposit. He shall cause his account with each depository to be settled at the end of every quarter of the year and the balance in such depository to the credit of the treasury to be carried forward to the account of the next quarter.

10 The treasurer shall furnish the board of investments and the president and minority leader of the Senate and the speaker and minority leader of the House of Delegates,
not later than the tenth day of each month, a statement showing the average daily balances of the preceding month in each state depository, and keep available for their inspection in the treasurer's office a record of the daily balances for each day on the last day of the preceding month in each such depository: Provided, That all such statements and records shall be reconciled within ninety days and the reconciled reports showing the average daily balances of each month shall be distributed as prescribed above and the reconciled records of the daily balance for each day of each month shall be kept in the treasurer's office for a period of five years.

§12-1-12. When treasurer may make funds available to the board of investments; depositories outside the state.

When the funds in the treasury exceed the amount needed for current operational purposes as determined by the treasurer, he may make all or part of such excess available for investment by the board of investments, which shall invest the same for the benefit of the general revenue fund.

Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the board of investments may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when such depositories outside the state have qualified by giving the bond prescribed in section four of this article, the state treasurer shall deposit funds therein in like manner as funds are deposited in depositories within the state under this article.

The treasurer may transfer funds to banks outside the state for investment purposes or to meet obligations to paying agents outside the state and any such transfer must meet the same bond requirements as set forth in this article.
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.

§12-2-3. Deposit of moneys by treasurer.

§12-2-4. Duty of depositories.

§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 statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit promptly with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, governing the procedure for such deposits. When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state, and shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, except the following funds:

(a) All moneys received out of appropriations made by the Congress of the United States;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of state government other than the farm management commission;

(c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;

(d) All fees and funds collected at state educational institutions for student activities;

(e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;
(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(g) All insurance collected on account of losses by fire and refunds;

(h) All funds derived from bookstores and sales of blank paper and stationery; and collections by the chief inspector of public offices;

(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and licenses under article nine, chapter thirty-one of this code, and all funds and moneys payable to or received by the natural resources commission of West Virginia;

(j) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be carried in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The official or employee making such deposits in the state treasury shall prepare such deposit lists in such manner and upon such report forms as may be prescribed by the treasurer. The original of this report
shall accompany the deposit to the treasurer's office. Certified or receipted copies shall be immediately forwarded by the state treasurer to the state auditor and to the commissioner of finance and administration, and a copy shall be kept by the official or employee making the report and shall become a part of his permanent record.

§12-2-3. Deposit of moneys by treasurer.

1. The treasurer shall promptly transmit or cause to be transmitted such deposits, together with a certificate of deposit, as soon as practicable to the depository in which he desires to make the deposit, and shall retain and record the deposit lists.

§12-2-4. Duty of depositories.

1. Immediately upon the receipt of such deposit, it shall be the duty of the depository to credit the state treasurer with the amount of the deposit, to date and sign the certificate of deposit by some legally constituted official of the depository and promptly transmit such certificate to the state treasurer.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-1. Manner of payment from treasury; form of checks.

1. Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he shall find to be justly due from the state, if payment thereof be authorized by law, and if there be an appropriation not exhausted or expired out of which it is properly payable, he shall issue his warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation the same is to be charged. On the presentation of such warrant to the treasurer, he shall ascertain whether the same has been drawn in pursuance of an appropriation made by law, and if he finds it to be so, he shall in that case, but not otherwise, endorse his check
upon such warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified; or he may issue a bank wire in payment of such warrant. If such check shall not be presented for payment within six months after it is drawn, it shall then be the duty of the treasurer to credit it to the depository on which it was drawn, to credit the state fund with the amount, and immediately notify the auditor to make corresponding entries on his books. No state depository shall pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words, "Void, unless presented for payment within six months." All claims required by law to be allowed by any court, and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the same affixed by the clerk of such court to his certificate of its allowance; and no such claim shall be audited and paid by the auditor unless the seal of such court be thereto attached as aforesaid. No tax or fee shall be charged by the clerk for affixing his seal to the certificate referred to in this section.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.
§12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.
§12-6-13. Board as sole agency for investments; exceptions.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:

3 (1) "Board" means the West Virginia state board of investments;

5 (2) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (b), section eight of this article;

8 (3) "Consolidated pension fund" means the invest-

1 Notwithstanding the restrictions which may otherwise be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;
(b) Any evidence of indebtedness issued by any of the following agencies: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association and Federal Farm Credit Banks;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency
and commercial paper or other evidence of indebtedness of any private corporation or association shall be pur- chased only upon the written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized; and

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter.

§12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.

Whenever the board determines that funds should be invested in interest earning deposits, including certificates of deposit, with depositories eligible in this state to receive such deposits, it shall equitably apportion its offering of such funds among all such depositories in this state. The board shall make such apportionment by considering first the total assessed value of all property within each county, and as to the distribution of the offering within the county, by considering the net loans outstanding of each bank and the mortgage loans (exclusive of mortgage participations) of each state and federal savings and loan association as set forth in the banking commissioner's most recent report of financial institutions qualifying as state depositories.

The annual rate of interest on funds placed in interest earning deposits with state depositories, including certificates of deposit, shall be determined by the board and may be adjusted by it from time to time according to the then prevailing rate of interest.

§12-6-13. Board as sole agency for investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the invest-
ment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are here-by transferred to the board, and the board shall be the sole agency for the investment of pension funds and state funds: Provided, That neither this section nor any other section of this article shall apply to the "board of the school fund" and the "school fund" estab-
lished by section four, article XII of the state constitu-
tion: Provided, however, That funds under the control of the municipal bond commission may, in the discretion of the commission, be made available to the board for in-
vestment to be invested by the commission as provided in article three, chapter thirteen of this code.

CHAPTER 66

(S. B. 75—By Mr. Brotherton, Mr. President, and Mr. Tonkovich)

[Passed March 10, 1979; in effect 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; and to amend article three of said chapter by adding thereto a new section, designated section three-a, all relating to the Legislature; authorizing a select committee unique to one house or any standing committee of that house to meet during the interim; providing travel and interim expense reimbursement; providing for staff; providing for creation and composition of legislative committees by resolution or on motion of the joint committee on government and finance; providing interim compensation for some interim committees; providing for the coordination of interim meetings by the joint committee on government and finance; requiring the joint committee on government and finance to make studies and surveys and to continue ongoing and continued studies; and allowing the joint committee on government and finance to com-
mission studies by standing committees.
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; and that article three of said chapter be amended by adding thereto a new section, designated section three-a, all 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.

3. Joint Committee on Government and Finance.

**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 meetings of legislative committees and subcommittees; interim meeting coordination; compensation and expenses.

(a) Either house of the Legislature may, by resolution, direct any select committee unique to that house or any standing committee of that house and created by it by rule, motion or resolution to meet between regular sessions of the Legislature. The presiding officer of such house may designate subcommittees of such standing or select committees and shall designate the chairman and membership thereof. Such committees or subcommittees shall function according to the rules for committees of the house creating them.

Members of such committees or subcommittees under this subsection, performing duties as members thereof, shall receive travel expense reimbursement as provided in section six, article two-a, chapter four and interim expense reimbursement as provided in section eight, article two-a, chapter four. However, to be eligible to receive travel expense reimbursement and interim expense reimbursement, meetings of these select committees and subcommittees thereof must be authorized by the rules committee of such house. Expenses shall be paid from any
Such committees or subcommittees shall have such staff as may be directed by the presiding officer of that house from which its membership is drawn, which may be paid for from appropriations to the use and benefit of such house, as designated by the rules committee thereof.

(b) From the date of adjournment sine die of any regular session of the Legislature until the first day of the next succeeding regular session of the Legislature, the Legislature by concurrent resolution, or the joint committee on government and finance on its own motion, may appoint a joint standing committee or a joint select committee, or any joint subcommittee of such standing or select committee, to function under the supervision of the joint committee on government and finance. Any such committee or subcommittee shall be composed of the standing or select committees of the respective houses having similar titles or jurisdiction, and similarly constituted, and the membership thereof shall be composed of members of the respective standing or select committees of each house, or subcommittees thereof, or be designated by the presiding officer of each house: Provided, That the membership of such joint committee or subcommittee may be drawn from more than one such standing or select committee.

(c) Members of the Legislature performing interim duties as members of the joint committee on government and finance, the commission on interstate cooperation, the joint committee on government operations, the legislative commission on pensions and retirement, the legislative rule-making review committee, the purchasing practices and procedures commission, standing committees of the Senate and of the House of Delegates, and authorized subcommittees of each of the above committees and commissions are authorized to meet between regular sessions of the Legislature, subject to the direction of the joint committee on government and finance. Members of the Legislature performing interim duties as a member of
said committees or commissions, or subcommittees there-
of, under this subsection, shall receive interim compensa-
tion as provided in section five, article two-a, chapter
four; travel expense reimbursement as provided in sec-
tion six, article two-a, chapter four; and interim expense
reimbursement as provided in section eight, article two-a,
chapter four. However, to be eligible to receive the in-
terim compensation, travel expense reimbursement and
interim expense reimbursement, payment must be autho-
rized by the joint committee on government and finance.

The joint committee on government and finance shall
coordinate meetings, of said committees and commissions,
and subcommittees thereof, between regular sessions of
the Legislature.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FI-
NANCE.

§4-3-3a. Interim powers and duties.

The joint committee on government and finance shall
coordinate meetings between regular sessions of the Leg-
islature of all legislative committees and legislative com-
missions established by and operating under general law
and shall authorize interim meetings of said committees
and commissions.

The joint committee on government and finance shall
study and survey matters of government, finance and
claims against the state as authorized by section three,
article three, chapter four. In addition, the joint com-
mitee may make studies it was directed to make by con-
current resolutions heretofore adopted by the Legislature
and continued for additional study by the joint commit-
tee by concurrent resolutions adopted by the Legislature.
The joint committee may make these studies by creation
of subcommittees.

The joint committee may commission studies to be
made jointly by appropriate standing committees of each
house of the Legislature between regular sessions of the
Legislature.
CHAPTER 67
(S. B. 288—By Mr. Palumbo)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to allowing members and members-elect of the Legislature to prefile bills and resolutions; numbering and referral of prefiled bills and resolutions; duplication and distribution of prefiled bills and resolutions; prefiled bills and resolutions not subject to withdrawal or amendment prior to formal introduction; and preparation of prefiled bills and resolutions for formal introduction.

Be it enacted by the Legislature of West Virginia:

That article one, chapter 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 twenty-one, 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.

§4-1-21. Prefiling of bills and resolutions.

1 (a) Within the thirty-day period immediately preceding the convening of the Legislature for commencement of a regular session thereof, any proposed bill or resolution may be prefiled by any member of the Legislature or by any person who has been elected or appointed to serve as a member of the Legislature but who has not yet been administered the oath of office. Such proposed bills or resolutions shall be filed with the clerk of the house in which the member or person will serve during the following regular session not later than the day preceding the opening of such session: Provided, That
nothing herein shall affect a member's right to introduce
a bill or resolution in accord with the rules of the house
of which he is a member.

(b) In addition to such number of copies of bills as
may be required to be presented for introduction by the
rules of the respective houses, all bills or resolutions
prefiled shall have two additional copies appended. After
numbering such bills or resolutions and editing and cor-
recting them as to form, as may be required by the rules
of the respective houses, the appropriate clerk shall make
a tentative referral to the appropriate committee of the
house, forwarding two copies thereof to the committee.
Prior to making such tentative referral, the clerk shall
confer with the presiding officer of the appropriate house
if such presiding officer is available and make such re-
ferral as such presiding officer shall direct. Upon the
commencement of the session of the Legislature, the
clerk, upon ratification by the appropriate presiding offi-
cer of the tentative referral, shall proceed with the formal
introduction of prefiled bills or resolutions according to
the method of introducing bills as may be provided by
the rules of the respective houses.

(c) Copies of prefiled bills and resolutions shall be
mailed to any member and each member-elect of the
Legislature requesting the same and reasonable quantities
shall be made available to the public and the news media.

(d) Once a bill or resolution is prefiled as herein pro-
vided, it may not be withdrawn or amended prior to its
formal introduction unless the rules of the house involved
otherwise direct.

CHAPTER 68
(S. B. 101—By Mr. Brotherton, Mr. President)

[Passed January 25, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two through ten, in-
cclusive, article two-a, chapter four of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing recommendations of one thousand nine hundred seventy-nine, of the citizens legislative compensation commission created by section thirty-three, article six of the West Virginia constitution, and relating to compensation for and expenses of members of the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two through ten, inclusive, article two-a, 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 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.
§4-2A-3. Compensation for members of the Legislature during any extraordinary session.
§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.
§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

PART III. EXPENSES.

§4-2A-6. Travel expenses.
§4-2A-7. Reimbursement for expenses incurred during any session.
§4-2A-8. Interim expenses.
§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; travel and lodging expenses within Charleston not reimbursable; rules authorized.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

1 (a) Each member of the Legislature shall receive as basic compensation for his services the sum of five thousand one hundred thirty-six dollars per calendar year as
basic compensation, plus additional compensations as are expressly provided for in sections three, four and five of this article. For the year one thousand nine hundred seventy-nine, said basic compensation shall be payable to each member as soon as possible after the effective date of this section.

(b) Beginning in the year one thousand nine hundred eighty and each year thereafter, said basic compensation shall be payable twice a month during each regular session of the Legislature, without regard to any extension of such regular session. In the event of the death, resignation or removal of a member of the Legislature during a regular session of the Legislature and the appointment and qualification of his successor during any such regular session, the basic compensation provided for in this section shall be prorated between the original member and his successor on the basis of the number of days served (including Saturdays and Sundays) as a member of the Legislature by each during said regular session.

(c) In the event of the death, resignation or removal of a member of the Legislature and the appointment and qualification of his successor subsequent to the regular session of the Legislature held in the calendar year in which such successor was appointed and qualified, none of the basic compensation provided for in this section shall be paid to such successor.

§4-2A-3. Compensation for members of the Legislature during any extraordinary session.

Each member of the Legislature shall receive, in addition to the basic compensation provided for in section two of this article, additional compensation of thirty-five dollars per day for each day of his attendance in person upon any business of the Senate or House of Delegates, as the case may be, on each day upon which said Senate or House of Delegates is actually called to order during each extraordinary session of the Legislature. Such additional compensation shall be paid from time to time
§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.

(a) In addition to the basic and additional compensation provided for in sections two and three of this article, the president of the Senate and the speaker of the House of Delegates shall each receive additional compensation of:

1. Thirty-five dollars per day for each day actually served during any regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

2. Thirty-five dollars per day up to a maximum of eighty such days per calendar year for attending to legislative business in their offices in the Capitol Building when the Legislature is not in regular or extraordinary session and interim committees are not meeting.

(b) In addition to the basic and additional compensation provided for in sections two and three of this article, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of fifteen dollars per day for each day actually served during any regular or extraordinary session as the selected legislative leaders of their respective political parties, including Saturdays and Sundays.

(c) Such presiding officer and majority and minority leader compensation shall be paid from time to time during any such session or interim period, as the case may be, as may be prescribed by rules established by the legislative auditor.

§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

(a) In addition to the basic and any additional and presiding officer and majority and minority leader com-
pensation provided for in sections two, three and four of this article, each member of the joint committee on government and finance and the commission on interstate cooperation shall receive interim compensation of thirty-five dollars per day for each day actually engaged in the performance of interim duties as a member of either such committee or commission between regular sessions of the Legislature: Provided, That not more than twenty-eight members combined of both such committee and commission shall be entitled to receive the interim compensation authorized in this section, and the total additional interim compensation payable to any such member and his replacement, if any, on such committee or commission under the provisions of this section shall not exceed the sum of one thousand fifty dollars per calendar year.

(b) If, for whatever reason, the Legislature should restructure its interim committee meetings along any lines whatsoever, the interim compensation authorized in subsection (a) of this section for members of the joint committee on government and finance and of the commission on interstate cooperation and the additional interim compensation authorized in this subsection may be authorized as interim compensation by the Legislature as it may determine, but not to exceed either thirty-five dollars per member of the Legislature per day for each day actually engaged in the performance of interim duties as a member of the Legislature, or a total of one thousand fifty dollars per calendar year for any one member, or a total of fifty-five thousand dollars per calendar year for all such interim compensation for the members of both houses of the Legislature combined.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

Each member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his duties as a member of the Legislature or any committee of the Legislature, whether such committee is
operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at the rate of seventeen cents per mile for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of such means of transportation actually used, plus the cost of necessary taxi or limousine service, tolls and parking fees in connection therewith, but during any regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his place of residence for each week of any such session.

In addition to the above travel expense, the president of the Senate and the speaker of the House of Delegates shall be entitled to be reimbursed as provided above, upon submission of an expense voucher, for expenses incurred incident to travel for up to a maximum of eighty days per calendar year in connection with their visits to the Capitol building for business which is related to their duties as presiding officers of the respective houses of the Legislature, but which takes place when the Legislature is not in regular or extraordinary session and interim committees are not meeting.

§4-2A-7. Reimbursement for expenses incurred during any session.

In addition to reimbursement for any travel expenses, as provided for in section six of this article, each member of the Legislature shall also be entitled to be reimbursed, upon submission of an expense voucher therefor, for all reasonable and necessary expenses actually incurred in connection with any regular or extraordinary session of the Legislature, but the total of any and all such reimbursed expenses, exclusive of reimbursement for any such travel expenses as aforesaid, shall not exceed lodging expenses of thirty dollars per day and meal and miscel-
laneous expenses of twenty dollars per day. A receipt for
the amount paid for lodging shall be submitted with the
expense voucher, but a receipt shall not be required to be
submitted with any such expense voucher for meal and
miscellaneous expenses. In lieu of reimbursement for
lodging expenses pursuant to the provisions of this sec-
tion, any member of the Legislature shall be entitled to be
reimbursed, upon submission of an expense voucher, for
expenses incurred incident to daily travel to and from his
place of residence and to and from the seat of govern-
ment at a rate of seventeen cents per mile for the most
direct usually traveled route, but the total of such daily
travel expenses shall not exceed thirty dollars per night.

§4-2A-8. Interim expenses.

In addition to reimbursement for any travel expenses
and any such reimbursements for any and all such
session expenses as provided for in sections six and seven
of this article, each member of the Legislature serving as
a member of any committee of the Legislature established
by and operating under general law and designated for
the performance of interim assignments by the Legisla-
ture or otherwise duly authorized to perform interim
assignments between regular sessions of the Legislature
shall also be entitled to be reimbursed, upon submission
of an expense voucher therefor, for all reasonable and
necessary expenses actually incurred incident to the per-
formance of duties as a member of any such committee,
but the total of any and all such reimbursed interim
expenses, exclusive of reimbursement for any such travel
and session expenses as aforesaid, shall not under any
circumstances exceed lodging expenses of thirty dollars
per day and meal and miscellaneous expenses of twenty
dollars per day for each day actually engaged in the
performance of interim duties as a member of any such
committee. The president of the Senate and the speaker
of the House of Delegates shall be entitled to be re-
imbursed for lodging expenses and for meal and miscel-
naneous expenses incurred in connection with their visits
to the Capitol building for business which is related to
their duties as presiding officers of the respective houses
of the Legislature, but which takes place when the Legislature is not in regular or extraordinary session and interim committees are not meeting, not to exceed lodging expenses of thirty dollars per day and meal and miscellaneous expenses of twenty dollars per day up to a maximum of eighty such days per calendar year. A receipt for the amount paid for lodging shall be submitted with the expense voucher, but a receipt shall not be required to be submitted with any such expense voucher for meal and miscellaneous expenses. In lieu of reimbursement for lodging expenses pursuant to the provisions of this section, any member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to daily travel to and from his place of residence and to and from the seat of government at a rate of seventeen cents per mile for the most direct usually traveled route, but the total of such daily travel expenses shall not exceed thirty dollars per night.


In addition to reimbursement for travel expenses as authorized in section six of this article, each member of the Legislature traveling from West Virginia to an out-of-state point or points and return incident to the performance of his duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, which travel has been duly authorized, shall be entitled to be reimbursed, upon submission of an expense voucher therefor, for all reasonable and necessary expenses actually incurred incident thereto, but the total of any and all such reimbursed expenses, exclusive of reimbursement for such travel expenses, shall not under any circumstances exceed the actual cost of lodging at the least expensive available single rate and meal and miscellaneous expenses of twenty-five dollars per day. A receipt for the amount paid for lodging and for travel by any public transportation to and from West Virginia shall be submitted with the expense voucher, but a receipt shall not be required to be submitted with any such expense voucher for meal and miscellaneous expenses.
§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; travel and lodging expenses within Charleston not reimbursable; rules authorized.

Any expense voucher submitted pursuant to the provisions of section six, seven, eight or nine of this article must be verified by the affidavit of the member incurring such expense and all such expense vouchers shall be approved by the legislative auditor prior to submission for payment.

Notwithstanding any other provisions of this article to the contrary, no member of the Legislature who resides within the corporate limits of the city of Charleston may be reimbursed under this article for any travel and lodging expenses incurred within such corporate limits.

The legislative auditor is hereby authorized to adopt, amend and repeal such rules as may be necessary to implement or effectuate the provisions of this article.

CHAPTER 69
(Revised Com. Sub. for S. B. 2—By Mr. Palumbo)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections two-a, six and eight, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one of said chapter by adding thereto two new sections, designated sections fourteen and fifteen; to amend article five of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections one, two, three and four of said article; and to amend and reenact section two, article six-a of said chapter, all relating to legal proceedings for involuntary hospitalization of the mentally ill; defining detained or taken into custody; defining computation of time; providing for the appointment of a mental hygiene commissioner; setting
forth the duties of the mental hygiene commissioner, prosecuting attorney and sheriff; providing for the appointment of attorneys to aid prosecutors in involuntary commitment hearings in counties wherein a state mental health facility is located; providing a procedure for involuntary custody for examination; providing for a probable cause hearing and medical examination; repeal of the probable cause hearing; providing for admission to a mental health facility for examination upon entry of an order finding probable cause and upon certification by one physician or one psychologist; providing for release of the individual if examination does not take place within three days of detention for custody; setting forth notice requirements of admission of an individual to a mental health facility for examination; providing for examination after admission to a mental health facility; providing a thirty-day time limit for conclusion of all proceedings; providing generally for involuntary commitment to a mental health facility by order of the circuit court of the county wherein the person resides or was found or in the county of the mental health facility in which he is hospitalized, after a full hearing; setting forth the notice requirements and hearing requirements for involuntary commitment; providing the right to have counsel appointed for the indigent individual; removing the requirement that the court-appointed physician or psychologist be other than the one whose certification accompanied the application; setting forth the rights of the individual at the final commitment hearing; providing for payment of attorneys appointed for individuals; providing for a record of the hearing; providing that a transcript be made available to the individual, his counsel, or the prosecuting attorney when requested for further proceedings; increasing to ten days the time which an individual may be detained until an order is received by the mental health facility; requiring that an order for an indeterminate period shall expire automatically after two years unless the department of health extends the order; providing a hearing on the extension of an order for an indeterminate period upon request of the individual or his counsel; requiring a report to the director of health; providing for the payment of some costs of the proceedings
from the “mental hygiene fund”; establishing the “mental hygiene fund” within the office of the supreme court of appeals of this state; payment of some costs of the proceedings by the county commission; repeal of examination of newly admitted patients; repeal of periodic examination and review of patient's hospitalization; requiring the institution of civil commitment proceedings against defendants in felony cases who are found incompetent to stand trial with no substantial likelihood of obtaining competency; requiring review of the individual's competency to stand trial every six months; and requiring trial of the defendant if he is found competent to stand trial.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Words and Phrases Defined.
5. Involuntary Hospitalization.
6A. Commitment of Persons Charged or Convicted of a Crime.

ARTICLE 1. WORDS AND PHRASES DEFINED.
§27-1-14. Detained or taken into custody.

§27-1-14. Detained or taken into custody.

1 "Detained or taken into custody" where used in this chapter shall permit detention for custody in a county facility which may be in the same building as the county jail if the said county facility:

5 (a) Meets the standards which the department of health shall prescribe; and
(b) Is approved for such use by the department of health; and

(c) Is inspected annually by the department of health.


The provisions of section one, article two, chapter two of this code shall apply to the time fixed for doing any act under this chapter.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

(a) Appointment of mental hygiene commissioner. The circuit court of each county shall appoint a competent attorney and, if necessary, one additional attorney to serve as an alternate, in each county to preside over such involuntary hospitalization hearings, who shall be designated "mental hygiene commissioner." He shall be a person of good moral character and of standing in his profession and he shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code.

(b) Duties of mental hygiene commissioner. The mental hygiene commissioner may sign and issue summons for the attendance, at any hearing held pursuant to section four, article five of this chapter, of the individual sought to be committed; may sign and issue subpoenas
for witnesses, including subpoenas duces tecum; may
place any witness under oath; and may make findings
of fact on evidence and may make conclusions of law,
but such findings and conclusions shall not be binding on
the circuit court. The circuit court by order entered
of record shall allow the commissioner a reasonable fee
for his services in connection with each case. The mental
hygiene commissioner shall discharge his duties and hold
his office at the pleasure of the circuit court by which
he is appointed and may be removed at any time by the
court. It shall be the duty of the mental hygiene com-
missioner to conduct orderly inquiries into the mental
health of any individual brought before him concerning
the advisability of committing the individual to a mental
health facility. The mental hygiene commissioner shall
safeguard, at all times, the rights and interests of the
individual as well as the interests of the state. The mental
hygiene commissioner shall make a written report of his
findings to the circuit court. In any proceedings before
any court of record as set forth in this article, the court
of record shall appoint an interpreter for any individual
who is deaf or cannot speak or who speaks a foreign
language and who may be subject to involuntary com-
mitment to a mental health facility.

(c) Duties of prosecuting attorney. In all proceedings
under this article, it shall be the duty of the prosecuting
attorney or one of his assistants to represent the ap-
licants.

(d) Duties of sheriff. Upon written order of the circuit
court or the mental hygiene commissioner of the county
where the individual formally accused of being mentally
incompetent, mentally retarded or addicted is a resident
or is found, the sheriff of that county shall take said
individual into custody and transport him to and from
the place of hearing and the mental health facility.

§27-5-1a. Appointment of attorney to aid prosecutor; certifica-
tion of performance; fee.

If, in any case, the prosecuting attorney and his as-
sists in a county in which there is a state mental
health hospital are unable to act due to a burdensome number of cases brought under this article, the circuit court shall appoint some competent practicing attorney to act in that case. The court shall certify to the director of the administrative office of the supreme court of appeals the performance of that service when completed and may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article eleven, chapter fifty-one of this code. Compensation shall be paid out of the "mental hygiene fund" provided for in section four of this article.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) When application for involuntary custody for examination may be made. Any adult person may make application for involuntary hospitalization for examination of an individual when said person has reason to believe that:

(1) The individual is mentally ill, mentally retarded or addicted, and

(2) That because of his mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.

(b) Oath; to whom application for involuntary custody for examination is made; contents of application; custody; probable cause hearing; examination.

(1) The person making such application shall do so under oath.

(2) Application for involuntary custody for examination may be made to the circuit court or mental hygiene commissioner of the county in which the individual resides, or of the county in which he may be found.

(3) The person making such application shall give
such information and state such facts therein as may be
required, upon the form provided for this purpose by the
department of health.

(4) The circuit court or mental hygiene commissioner
may thereupon enter an order for the individual named
in such action to be detained and taken into custody, for
the purpose of holding a probable cause hearing described
in subdivision five of this subsection and for the purpose
of an examination of the individual by one physician or
one psychologist. The said order shall specify the se-
quence in which such hearing and examination shall
occur, shall require that such hearing be held forthwith,
and shall appoint counsel for the individual.

(5) A probable cause hearing shall be held before a
magistrate, the mental hygiene commissioner or circuit
judge of the county of which the individual is a resident
or where he was found. If requested by the individual
or his counsel, the hearing may be postponed for a
period not to exceed forty-eight hours.

The individual must be present at the hearing and
shall have the right to present evidence, confront all
witnesses and other evidence against him, and to ex-
amine testimony offered. The individual shall have the
right to remain silent and to be proceeded against by the
rules of evidence. At the conclusion of the hearing the
magistrate, mental hygiene commissioner or circuit court
shall find and enter an order stating whether or not
there is probable cause to believe that such individual
as a result of mental illness, mental retardation or addic-
tion is likely to cause serious harm to himself or others.

§27-5-3. Admission under involuntary hospitalization for ex-
amination; hearing; release.

(a) Admission to a mental health facility for examina-
tion. Any individual may be admitted to a mental health
facility for examination upon entry of an order finding
probable cause as provided in section two of this article
and upon certification by one physician or one psycholo-
gist that he has examined the individual and that he is of
the opinion the individual is mentally ill, mentally retard-
ed or addicted and because of his mental illness, mental
retardation or addiction is likely to cause serious harm to
himself or others if not immediately restrained. The chief
medical officer of said mental health facility may, with the
approval of the director of health, transfer such individ-
ual to a state hospital or to another similar type of mental
health facility after determining that no less restrictive
treatment alternative is suitable or available. The chief
medical officer of the mental health facility admitting the
individual shall forthwith make a report thereof to the
director of health.

(b) Three-day time limitation on examination. If said
examination does not take place within three days from
the date the individual is taken into custody, the individ-
ual shall be released. If the examination reveals that the
individual is not mentally ill, mentally retarded or addic-
ted, the individual shall be released.

(c) Three-day time limitation on certification. The cer-
tification required in subsection (a) of this section shall
be valid for three days. Any individual with respect to
whom such certification has been issued may not be ad-
mitted on the basis thereof at any time after the expira-
tion of three days from the date of such examination.

(d) Findings and conclusions required for certification.
A certification under this section must include findings
and conclusions of the mental examination, the date,
time and place thereof, and the facts upon which the con-
clusion of likelihood of causing serious harm is based.

(e) Notice requirements. When an individual is ad-
mitted to a mental health facility pursuant to the pro-
visions of this section, the chief medical officer thereof
shall immediately give notice of the individual's admis-
sion to the individual's spouse, if any, and one of the
individual's parents or parent or guardian, or if there be
no such spouse, parents or guardians to one of the indi-
vidual's adult next of kin: Provided, That such next of
kin shall not be the applicant. Notice shall also be given
to the community mental health facility, if any, having
jurisdiction in the county of the individual's residence. Such notices other than to the community mental health facilities shall be in writing and shall be transmitted to such person or persons at his, her or their last-known address by certified or registered mail, return receipt requested.

(f) Five-day time limitation for examination and certification at mental health facility. After the individual's admission to a mental health facility, he shall not be detained more than five days excluding Sundays and holidays, unless, within such period, the individual is examined by a staff physician and such physician certifies that in his opinion the patient is mentally ill, mentally retarded or addicted and is likely to injure himself or others if allowed to be at liberty.

(g) Ten-day time limitation for institution of final commitment proceedings. If, in the opinion of the examining physician, the patient is mentally ill, mentally retarded or addicted and because of such mental illness, mental retardation or addiction he is likely to injure himself or others if allowed to be at liberty, the chief medical officer shall, within ten days from the date of admission, institute final commitment proceedings as provided in section four of this article. If such proceedings are not instituted within such ten-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing shall not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) Thirty-day time limitation for conclusion of all proceedings. If all proceedings as provided in article three and article four of this chapter are not completed within thirty days from the date of institution of such proceedings, the patient shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) Involuntary commitment. Except as provided in section three of this article, no individual shall be in-
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voluntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found, or if the individual is hospitalized in a mental health facility located in a county other than where he resides or was found, in the county of the mental health facility, and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility: Provided, That if said individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) How final commitment proceedings are commenced. Final commitment proceedings for an individual may be commenced by the filing of a written application under oath and the certificate or affidavit is hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident, or where he may be found, or the county of the mental health facility, if he is hospitalized in a mental health facility located in a county other than where he resides or may be found, by an adult person having personal knowledge of the facts of the case.

(c) Oath; contents of application; who may inspect application; when application cannot be filed.

(1) The person making such application shall do so under oath.

(2) The application shall contain statements by the applicant that he believes because of symptoms of mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others and the grounds for such belief, stating in detail the recent overt acts upon which such belief is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation.

(3) The written application, certificate, affidavit and
any warrants issued pursuant thereto, including any
papers and documents related thereto filed with any
circuit court or mental hygiene commissioner for the
involuntary hospitalization of any individual shall not be
open to inspection by any person other than the indi-
vidual, except upon authorization of the individual or
his legal representative or by order of the circuit court,
and such records shall not be published except upon the
authorization of the individual or his legal representa-
tive.

(4) Applications shall not be filed with regard to
individuals who are merely epileptics, mentally deficient
or senile.

(d) Certificate filed with application; contents of cer-
tificate; affidavit by applicant in place of certificate.

(1) The applicant shall file with his application the
certificate of a physician or a psychologist stating that in
his opinion the individual is mentally ill, mentally re-
tarded or addicted and that because of his mental illness,
mental retardation or addiction, the individual is likely
to cause serious harm to himself or others if he is allowed
to remain at liberty and therefore he should be hos-
pitalized, stating in detail the recent overt acts upon
which such conclusion is based: Provided, That no such
statement of recent overt acts need be made when the
applicant alleges the individual is likely to cause serious
harm as a result of having a complete inability to care
for himself by reason of mental retardation.

(2) A certificate is not necessary only when an affidavit
is filed by the applicant showing facts that the individual
has refused to submit to examination by a physician or
a psychologist.

(e) Notice requirements; eight days’ notice required.
Upon receipt of an application, the mental hygiene com-
missioner or circuit court shall review the application
and if it is determined that the facts alleged, if any, are
sufficient to warrant involuntary hospitalization, forth-
with fix a date for and have the clerk of the circuit court
give notice of the hearing (1) to the individual, (2) to
the applicant or applicants, (3) to the individual's spouse, one of the parents or guardians, or if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin: Provided, That such person is not the applicant, (4) to the mental health authorities serving the area, (5) to the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of such individual's residence, and (6) to the prosecuting attorney of the county in which the hearing is to be held. Such notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing, and shall specify the nature of the charges against the individual; the facts underlying and supporting the application of his involuntary commitment; his right to have counsel appointed for him; his right to consult with and be represented by counsel at every stage of the proceedings; and the time and place of the hearing. The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(f) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings.

(1) Except as provided in subsection three of this section, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit court or mental hygiene commissioner his findings as to the mental condition of the individual and the likelihood of his causing serious harm to himself or others.

(2) If the designated physician or psychologist reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination,
the circuit court or mental hygiene commissioner shall
order him to submit to such examination. The circuit
court or mental hygiene commissioner may direct that
the individual be detained or taken into custody for the
purpose of an immediate examination by the designated
physician or psychologist. All such orders shall be di-
rected to the sheriff of the county or other appropriate
law-enforcement officer. After such examination has
been completed, the individual shall be released from
custody unless proceedings are instituted pursuant to
section three of this article.

(3) If the reports of the appointed physician or psy-
chologist do not confirm that the individual is mentally
ill, mentally retarded or addicted and might be harmful
to himself or others, then the proceedings for his in-
voluntary hospitalization shall be dismissed.

(g) Rights of the individual at the final commitment
hearing; seven days’ notice to counsel required.

(1) The individual shall be present at the final commit-
ment hearing and he, the applicant and all persons
entitled to notice of such hearing shall be afforded an
opportunity to testify and to present and cross-examine
witnesses.

(2) In the event that the individual has not retained
counsel, the court or mental hygiene commissioner at
least six days prior to hearing shall appoint a competent
attorney, and shall inform the individual of the name,
address and telephone number of his appointed counsel.

(3) The individual shall have the right to have an
examination by an independent expert of his choice and
testimony from such expert as a medical witness on his
behalf. The cost of such independent expert shall be
borne by the individual unless he is indigent.

(4) The individual shall not be compelled to be a
witness against himself.

(h) Duties of counsel representing individual; pay-
ment of counsel representing indigent.
(1) The counsel representing an individual shall conduct a timely interview, make investigation and secure appropriate witnesses, and shall be present at the hearing and protect the interest of the individual.

(2) Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article eleven, chapter fifty-one of this code.

(i) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner shall be bound by the rules of evidence except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony notwithstanding failure to inform the individual that this statement may be used against him. Any psychologist or physician testifying shall bring all records pertaining to said individual to said hearing. Such medical evidence obtained pursuant to an examination under this section, or section two or section three of this article, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual, his counsel or the prosecuting attorney within thirty days, if the same is requested for
the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(j) Requisite findings by the court.

(1) Upon completion of the final commitment hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not the individual is mentally ill, retarded or addicted and because of his illness, retardation or addiction is likely to cause serious harm to himself or to others if allowed to remain at liberty and is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county.

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

(3) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.

(k) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months.

(2) The individual shall not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(3) If the order pursuant to a final commitment hear-
The mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization, to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the department of health, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization: Provided, That if the patient or his counsel requests a hearing, then a hearing shall be held by the mental hygiene commissioner; or by the circuit court of the county as provided in subsection (a) of this section.

(1) **Dismissal of proceedings.** If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill, mentally retarded or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill, mentally retarded or addicted but is not because of such illness, retardation or addiction likely to cause serious harm to himself or others if allowed to remain at liberty, the proceedings shall be dismissed.

(m) **Immediate notification of order of hospitalization.** The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual’s residence, shall immediately upon entry thereof forward a certified copy of same to the clerk of
the circuit court of the county of which the individual is a
resident.

(n) Consideration of transcript by circuit court of
county of individual's residence; order of hospitalization;
execution of order.

(1) If the circuit court or mental hygiene commis-
sioner is satisfied that hospitalization should be ordered
but finds that the individual is not a resident of the
county in which the hearing is held, and the individual
is not currently a resident of a mental health facility,
a transcript of the evidence adduced at the final com-
mitment hearing of such individual, certified by the clerk
of the circuit court, shall forthwith be forwarded to the
clerk of the circuit court of the county of which such
individual is a resident, who shall immediately present
such transcript to the circuit court or mental hygiene
commissioner of said county.

(2) If the circuit court or mental hygiene commis-
sioner of the county of the residence of the individual
is satisfied from the evidence contained in such transcript
that such individual should be hospitalized as determined
by the standard set forth above, the circuit court shall
order the appropriate hospitalization as though the indi-
vidual had been brought before the circuit court or its
mental hygiene commissioner in the first instance.

(3) This order shall be transmitted forthwith to the
clerk of the circuit court of the county in which the
hearing was held who shall execute said order promptly.

(o) Order of custody to responsible person. In lieu
of ordering the patient to a mental health facility, the
circuit court may order the individual delivered to some
responsible person who will agree to take care of the
individual and the circuit court may take from such
responsible person a bond in an amount to be determined
by the circuit court with condition to restrain and take
proper care of such individual until further order of the
court.

(p) Individual not a resident of this state. If the indi-
Mentally Ill Persons

310 individual found to be mentally ill, mentally retarded or addicted by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be forthwith given to the director of health, who shall make appropriate arrangements for his transfer to the state of his residence conditioned on the agreement of the individual except as qualified by the interstate compact on mental health.

318 (q) Report to the director of health.

319 (1) The chief medical officer of a mental health facility admitting a patient pursuant to proceedings under this section shall forthwith make a report of such admission to the director of health.

320 (2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility to comply with the time requirements of this article, the chief medical officer of such mental health facility shall forthwith after the release of the individual make a report to the director of health of the failure to comply.

330 (r) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.

333 (1) The state shall pay the attorney fees, court reporter fees and commissioner fees out of a special fund to be established within the supreme court of appeals of this state, to be known as the “mental hygiene fund.”

337 (2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and witness called by the indigent individual.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's compe-
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2 Mentally ill persons are eligible for a competency hearing if there is a tendency to stand trial, the defendant shall be present and he shall have the right to be presented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues of the hearing and shall have access to a summary of the medical evidence to be presented by the state. The defendant shall have the right to an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in such competency proceedings.

(b) At the termination of such hearing the court of record shall make a finding of fact upon a preponderance of the evidence as to the individual's competency to stand trial based on whether or not the individual is capable of participating substantially in his defense and understanding the nature and consequences of a criminal trial. If the individual is found competent, the court of record shall forthwith proceed with the criminal proceedings. If the individual is found incompetent to stand trial, the court of record shall upon the evidence make further findings as to whether or not there is a substantial likelihood that the individual will attain competency within the next ensuing six months, and if the court of record so finds, the individual may be committed to a mental health facility for an improvement period not to exceed six months. If requested by the chief medical officer of the mental health facility on the grounds that additional time is necessary for the individual to attain competency, the court of record may, prior to the termination of the six-month period, extend the period for an additional three months. Within ten days of the termination of such period, the court of record shall ascertain by hearing in accordance with subsection (a) of this section whether or not the individual has attained competency to stand trial.

(c) If the individual is indicted for a misdemeanor and is found to be incompetent to stand trial with no substantial likelihood of obtaining competency, or if after such improvement period the individual is found to be incom-
petent to stand trial, the criminal charges shall be dismissed. The dismissal order may be stayed for ten days to allow civil commitment proceedings to be instituted pursuant to article five of this chapter.

(d) If the individual is a defendant in a felony case and is found initially to be incompetent to stand trial with no substantial likelihood of obtaining competency, or if after such improvement period the individual is found to be incompetent to stand trial, then the director of health shall institute against the individual civil commitment proceedings pursuant to article five of this chapter and the criminal charges shall be dismissed. If the individual is committed pursuant to article five of this chapter, then the director of health shall cause the individual's competency to stand trial to be reviewed every six months during the period of his civil commitment, and shall report his findings to the court of record after every such review. If the director of health finds that the individual is competent to stand trial, then a hearing shall be held by the court of record in accordance with subsection (a) of this section. If, after such hearing, the individual is found competent to stand trial, he shall be tried; if, after such hearing, the individual is found incompetent to stand trial, he shall be recommitted for the period of his commitment as ordered pursuant to article five of this chapter, with mandatory review of his competency to stand trial every six months in accordance with this subsection. If said individual becomes competent to stand trial, the director of health shall notify the prosecuting attorney of the county where the criminal charges were brought against the individual.

CHAPTER 70
(S. B. 496—By Mr. Gainer)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section four, article one, chapter twenty-two of said code, all relating to directing the directors of the department of mines and department of natural resources to adopt programs, regulations and procedures to provide assistance to small coal operators; and permitting the use of certain funds therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

20. Natural Resources.


CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility; assistance to small operators; adoption of programs and regulations; officers and employees prohibited from engaging in certain activities.

1 Except as otherwise provided in section twenty-one of this article, the department of natural resources is hereby vested with jurisdiction over all aspects of surface mining and with jurisdiction and control over land, water and soil aspects pertaining to surface-mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby.

8 The Legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes soil erosion, pyritic shales and materials, landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and
14 slides, destroys the value of some lands for agricultural
15 purposes and some lands for recreational purposes, de-
16 stroyes aesthetic values, counteracts efforts for the con-
17 servation of soil, water and other natural resources, and
18 destroys or impairs the health, safety, welfare and prop-
19 erty rights of the citizens of West Virginia, where proper
20 reclamation is not practiced.

21 The Legislature also finds that there are wide varia-
22 tions regarding location and terrain conditions surround-
23 ing and arising out of the surface mining of minerals,
24 primarily in topographical and geological conditions, and
25 by reason thereof, it is necessary to provide the most
26 effective, beneficial and equitable solution to the prob-
27 lems involved.

28 The Legislature further finds that authority should be
29 vested in the director of the department of natural re-
30 sources to administer and enforce the provisions of this
31 article.

32 The director of the department of natural resources
33 and the director of the department of mines shall co-
34 operate with respect to departmental programs and
35 records so as to effect an orderly and harmonious ad-
36 ministration of the provisions of this article. The director
37 of natural resources may avail himself of any services
38 which may be provided by other state agencies in this
39 state and other states or by agencies of the federal
40 government, and may reasonably compensate them for
41 such services. He may also receive any federal funds,
42 state funds or any other funds for the reclamation of
43 land affected by surface mining. The department of
44 mines and all departments, schools and colleges of West
45 Virginia University shall cooperate fully with the divi-
46 sion of reclamation of the department of natural re-
47 sources in administering and enforcing the provisions
48 of this article.

49 The directors of the departments of mines and natural
50 resources shall adopt programs, regulations, and proce-
dures designed to assist the small coal operator with obtaining permit and meeting the environmental protection performance standards for surface and underground coal mining operations within the state under the provisions of section 507(c) of the Federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, and regulations promulgated pursuant thereto; and, in the discretion of the director of the department of natural resources, to assist such small operators in meeting such other standards of such act within the limits of available funds therefor: Provided, That the director of the department of natural resources shall promulgate rules and regulations identifying the scope and extent of assistance and services to be provided in addition to those under said section 507(c). For the purposes of this section a small coal operator is one who is anticipated to mine less than two hundred thousand tons per year, but the department in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation. In the absence of other state or federal funds available for the administration of such programs and procedures, the director of the department of natural resources may utilize the surface reclamation fund for such purpose.

No public officer or employee in the department of natural resources, the department of mines, or the office of attorney general, having any responsibility or duty either directly or of a supervisory nature with respect to the administration or enforcement of this article shall (1) engage in surface mining as a sole proprietor or as a partner or (2) be an officer, director, stockholder, owner or part owner of any corporation or other business entity engaged in surface mining or (3) be employed as an attorney, agent or in any other capacity by any person, partnership, firm, association, trust or corporation engaged in surface mining. Any violation of this paragraph by any such public officer or employee shall constitute grounds for his removal from office or dismissal from his employment, as the case may be.
CHAPTER 22. MINES AND MINERALS.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-4. Director of the department of mines—Powers and duties.

1 The director of the department of mines shall have full
2 charge of the department. He shall have the power and
3 duty to:

4 (1) Supervise and direct the execution and enforce-
5 ment of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of
7 mines, fix his compensation and prescribe his powers and
8 duties.

9 (3) Employ such assistants, clerks, stenographers and
10 other employees as may be necessary to fully and effec-
11 tively carry out the provisions of this law and fix their
12 compensation, except as otherwise provided in this article.

13 (4) Employ mine inspectors, and assign them to divi-
14 sions or districts in accordance with the provisions of
15 section seven of this article as may be necessary to fully
16 and effectively carry out the provisions of this law, in-
17 cluding the hiring and training of inspectors for the spe-
18 cialized requirements of surface mining, shaft and slope
19 sinking, and surface installations and to supervise and
20 direct such mine inspectors in the performance of their
21 duties.

22 (5) Suspend, for good cause, any mine inspector with-
23 out compensation for a period not exceeding thirty days
24 in any calendar year.

25 (6) Prepare report forms to be used by mine in-
26 spectors in making their findings, orders and notices,
27 upon inspections made in accordance with this chapter.

28 (7) Hear and determine applications made by mine
29 operators for the annulment or revision of orders made
30 by mine inspectors, and to make inspections of mines, in
31 accordance with the provisions of this article.
(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(9) Make annually a full and complete written report of the administration of his department to the governor and the Legislature of the state for the year ending the thirtieth day of June. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (including oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the department from all sources identifying each source of such funds, the expenditures of the department, the surplus or deficit of the department at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the department, the number of inspections made by each inspector, the number and type of violations found by each inspector: Provided, That no inspector shall be identified by name in this report. Such reports shall be filed with the governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records, or other documents relevant or material to the hearing. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be
paid out of the state treasury upon a requisition upon the
state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including
permanent or temporary injunctions, restraining orders,
or any other appropriate action in the appropriate federal
or state court whenever any operator or his agent violates
or fails or refuses to comply with any lawful order,
notice or decision issued by the director or his repre-
sentative.

(12) Perform all other duties which are expressly
imposed upon him by the provisions of this chapter.

(13) Make all records of the department open for
inspection of interested persons and the public.

(14) In conjunction with the director of the depart-
ment of natural resources, adopt programs, regulations
and procedures designed to assist the small coal oper-
ator with obtaining permits and meeting the environ-
mental protection performance standards for strip and
underground coal mining operations within the state.
For the purposes of this subdivision, a small coal operator
is one who is anticipated to mine less than two hundred
thousand tons per year, but the department in determin-
ing tonnage shall consider wholly owned subsidiaries to
be the same operation as the parent corporation.

CHAPTER 71

(Com. Sub. for H. B. 1404—By Mr. Speaker, Mr. See, and Mr. Tompkins)

[Passed March 8, 1979; in effect from passage. Approved by the Governor.]
operations; setting forth legislative findings, declarations and purpose; authorizing the director of the department of natural resources and the reclamation commission to prepare proposed legislation and proposed rules and regulations to conform the state's statutory and regulatory requirements regarding mining activities with the federal surface mining control and reclamation act of one thousand nine hundred seventy-seven, and any valid rule or regulation promulgated pursuant thereto or thereunder; requiring such director and reclamation commission to do such acts as may be required to assure that the state of West Virginia will timely assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground coal mining operations in the state; requiring the director and the reclamation commission to submit such proposed legislation and proposed rules and regulations by a certain date to the joint committee on government and finance for its review of such proposed legislation and such proposed rules and regulations; requiring the joint committee on government and finance to report its recommendations with recommended legislation to the next session of the Legislature; expressing the intention of the Legislature to follow such recommendations and enact necessary legislation; providing that such proposed rules and regulations prepared by the director and the reclamation commission shall not become operative until made a part of an approved state program; providing that no state law or rule and regulation included in such state program shall be more stringent than or inconsistent with the requirements of the federal surface mining control and reclamation act or regulations promulgated pursuant thereto or thereunder; requiring the director to identify and report all existing statutes and rules and regulations more stringent than the federal act, including those which impair the competitive position of West Virginia coal and, if so, why they are reasonably necessary to state regulation; providing that if any provisions of federal law or rules and regulations regarding surface mining and reclamation or the surface effects of underground coal mining are amended, modified, affected or invalidated, the state program under which exclusive jurisdiction thereof is assumed shall be similarly applied and construed; and providing that expiration of expanded rule-making authority of
the director and the reclamation commission under section twenty-three-a, article six, chapter twenty of the code shall not affect valid rules and regulations promulgated under such authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-23b. Legislative findings and purposes; expanded duties of director and reclamation commission; state program under the federal surface mining control and reclamation act of 1977.

1 (a) The Legislature hereby finds and declares that the “Surface Mining Control and Reclamation Act of 1977,” Public Law 95-87, enacted by the Congress of the United States and approved on the third day of August, one thousand nine hundred seventy-seven, hereinafter in this section referred to as the “federal surface mining act,” establishes a nationwide program of environmental requirements relating to surface coal mining operations and the surface effects of underground coal mining operations; that the federal surface mining act was intended in part to equalize the regulatory requirements among the states relating to surface mining operations and the surface effects of underground coal mining operations and to ensure competitive balance among producers and sellers of coal; that the federal surface mining act provides for assistance to the states in developing and implementing programs to achieve the purposes thereof; that nothing in this section shall be construed as an expression of approval of or satisfaction with the federal surface mining act or any rule or regulation promulgated pursuant thereto or thereunder, so as to limit or affect any suit, action or other proceeding brought to invalidate, set aside or modify, in whole or in part, the federal surface mining act or any rule or regulation promulgated pursuant thereto or thereunder; that because of the diversity in terrain and climate and biologic, chemical and other physical conditions in and among
areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for mining and reclamation operations should rest with the states; that the authority to regulate surface mining and reclamation operations in the state has already been vested in the department of natural resources and the reclamation commission; that the laws and regulations of the state relating to mining and reclamation operations are in many instances at variance with the provisions of the federal surface mining act and regulations promulgated pursuant thereto; that under the federal surface mining act, and particularly section five hundred three thereof, if the state desires to be the primary governmental agency responsible for mining and reclamation operations in the state, it must submit to the secretary of the United States department of interior by the third day of August, one thousand nine hundred seventy-nine, a state program which demonstrates that the state has the capability of carrying out the provisions of the federal surface mining act and meeting its purposes; that if a state program is approved pursuant to the provisions of the federal surface mining act, the state will assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground coal mining operations in the state; that if a state program is not submitted to the secretary of the United States department of interior by no later than the third day of August, one thousand nine hundred seventy-nine, and is not thereafter approved, the federal surface mining act provides that a federal program will be implemented in the state no later than the third day of June, one thousand nine hundred eighty; and that it would be in the best interest of this state for this state rather than the federal government to have primary governmental responsibility for mining and reclamation operations in this state.

(b) In view of the foregoing findings and declarations, it is the purpose of this section to authorize the director of the department of natural resources and the reclamation commission to undertake certain actions, including the preparation of proposed legislation and proposed rules and regulations as more specifically directed hereinafter; the submission of such pro-
posed legislation and proposed rules and regulations to the
joint committee on government and finance for its review;
and obtaining the necessary approvals of such state program,
all for the purpose of assuring that the state ultimately as-
sumes exclusive jurisdiction of the regulation of surface coal
mining and reclamation operations and the surface effects of
underground coal mining operations in the state as contem-
plated under and permitted by the federal surface mining act:
Provided, That no part of such state program shall require
standards more stringent than or inconsistent with those
contained in the federal surface mining act or any valid rule
or regulation promulgated pursuant thereto or thereunder:
Provided, however, That before any existing statute or rule
or regulation which is or may be more stringent than those
required by the federal surface mining act or any valid rule or
regulation promulgated pursuant thereto or thereunder is
changed or modified, the director shall, on or before the
thirty-first day of May, one thousand nine hundred seventy-
nine, identify and report (1) all existing statutes and rules and
regulations which are more stringent than the requirements of
the federal surface mining act or any valid rule or regulation
promulgated thereto or thereunder; (2) whether any such
existing statutes and rules and regulations substantially impair
the competitive position of West Virginia coal in the coal in-
dustry, and, if so, (3) why any such existing statutes and rules
and regulations are reasonably necessary to the regulation of
surface mining and reclamation or the surface effects of under-
ground coal mining.

(c) In addition to other powers, duties and authority of the
director and the reclamation commission provided elsewhere
in this code, the director and the reclamation commission, on
or before the third day of August, one thousand nine hundred
seventy-nine, shall prepare a state program for submission to
the federal office of surface mining; submit such state program
for approval as provided under the federal surface mining act;
and do all such further acts as may be required to assure that
this state will on or before the third day of June, one thousand
nine hundred eighty, assume exclusive jurisdiction over the
regulation of surface coal mining and reclamation operations
and the surface effects of underground coal mining operations
in the state as contemplated by the federal surface mining act:

Provided, That no part of such state program shall require standards more stringent than or inconsistent with those contained in the federal surface mining act or any valid rule or regulation promulgated pursuant thereto or thereunder:

Provided, however, That before any existing statute or rule or regulation which is or may be more stringent than those required by the federal surface mining act or any valid rule or regulation promulgated pursuant thereto or thereunder is changed or modified, the director shall, on or before the thirty-first day of May, one thousand nine hundred seventy-nine, identify and report (1) all existing statutes and rules and regulations which are more stringent than the requirements of the federal surface mining act or any valid rule or regulation promulgated thereto or thereunder; (2) whether any such existing statutes and rules and regulations substantially impair the competitive position of West Virginia coal in the coal industry, and, if so, (3) why any such existing statutes and rules and regulations are reasonably necessary to the regulation of surface mining and reclamation or the surface effects of underground coal mining.

(d) The state program required to be prepared pursuant to the provisions of subsection (c) of this section or a proposal of such program, shall be prepared and submitted to the joint committee on government and finance no later than the thirty-first day of May, one thousand nine hundred seventy-nine. It is the intention of the Legislature that the joint committee on government and finance shall cause the proposed legislation and the proposed rules and regulations submitted to it to be reviewed to ensure compliance with the provisions of this section. The director, the reclamation commission and the joint committee on government and finance shall work together to ensure that proper proposed legislation and proposed rules and regulations are developed and included in a comprehensive state program and that such state program is timely submitted for approval as provided by the federal surface mining act. The joint committee on government and finance may hold public hearings where interested persons may comment upon any such proposed legislation and proposed rules and regulations.
(e) The joint committee on government and finance shall report to the next session of the Legislature on or before the fourteenth day of January, one thousand nine hundred eighty, its recommendations to ensure that the intent and purposes of this section are fulfilled, together with a draft of any legislation and rules and regulations necessary to effectuate its recommendations. It is the intention of the Legislature by enacting this section to enact legislation necessary to effectuate and carry out the intent and purposes of this section and specifically to grant to the director and the reclamation commission the authority to promulgate the proposed rules and regulations, if by so doing the comprehensive state program prepared as required by and in accordance with the provisions of this section will be finally approved as provided in the federal surface mining act.

(f) Notwithstanding anything to the contrary contained in this code, the proposed rules and regulations prepared pursuant to the provisions of this section shall not become operative in this state until such time as the state program of which they are a part shall have been approved by the secretary of the United States department of interior and the state, pursuant to such approval, has assumed exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground mining operations as provided under the federal surface mining act. At the time such rules and regulations become operative, any rules and regulations theretofore promulgated by the director or the reclamation commission for the purpose of regulation of surface coal mining and reclamation operations or the surface effects of underground coal mining operations in this state shall, to the extent that such prior rules and regulations are inconsistent with such operative rules and regulations approved pursuant to the federal surface mining act, become inoperative, null and void and no longer of any force and effect in this state.

(g) Notwithstanding any other provision of this code or any rule or regulation promulgated by the director or the reclamation commission, if the Congress or the United States department of interior or any final judicial action amends, modifies, affects or invalidates any provision of the federal surface mining act or any rule or regulation promulgated pursuant thereto
or thereunder so as to change or eliminate deadlines, performance standards, procedural requirements or any other provision thereof, the applicable provisions of any state law, rule and regulation or program respecting surface mining and reclamation operations and the surface effects of underground coal mining operations shall be similarly applied and construed.

(h) Any valid rules and regulations promulgated by the director or the reclamation commission under section twenty-three-a of this article and permits issued pursuant thereto shall not be affected in any way by the expiration of rule-making authority under section twenty-three-a.

CHAPTER 72

(Com. Sub. for H. B. 1003—By Mr. Bryan)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend article two-a, 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 seven, relating to establishing compensation and expenses for members of the board of coal mine health and safety other than the director of the department of mines.

Be it enacted by the Legislature of West Virginia:

That article two-a, 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 seven, to read as follows:

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.


Each member of the board, except the director of the department of mines, shall receive seventy-five dollars per diem
while actually engaged in the performance of the duties of the board, but not more than eighteen hundred dollars in any one fiscal year. Each such member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

CHAPTER 73
(Com. Sub. for S. B. 558—By Mr. Rogers)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and nine, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the mobile home safety act generally; promulgation of rules and regulations requiring a dealer in mobile homes to install a smoke detection system in mobile homes offered for sale in this state by such dealer; making the sale of a mobile home not equipped with a smoke detection system by a dealer unlawful; and establishing criminal and civil penalties against a dealer in mobile homes for the sale of mobile homes in this state not equipped with a smoke detection system.

Be it enacted by the Legislature of West Virginia:

That sections three, four and nine, article nine, 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 9. MOBILE HOME SAFETY ACT.

§21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations for installation of smoke detection system; additional rules and regulations; fees.
§21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.

§21-9-9. Violation of article, rules or regulations; criminal and civil penalties.

21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations for installation of smoke detection system; additional rules and regulations; fees.

1 The department is hereby charged with the administration and enforcement of the provisions of this article and shall promulgate and adopt a safety code, which shall substantially conform to the national standards and any amendments thereto. Nothing herein shall prevent the department from adopting a safety code of more rigid standards than those contained in the national standards. The department shall also promulgate and adopt rules and regulations requiring the installation of a smoke detection system in any mobile home offered for sale in this state by a dealer in mobile homes. The department may adopt such other rules and regulations as it may deem necessary and appropriate for the enforcement of the provisions of this article.

All rules and regulations adopted by the department pursuant to this article shall be so adopted and promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and the provisions of said article three shall apply to this article to the same extent as if said article three were set forth in extenso herein. The department may, from time to time, adopt such revisions in the safety code, as well as in any other rules and regulations adopted by it, as it deems necessary to protect the health, safety and welfare of the public against unsafe and substandard mobile homes.

The department shall collect a fee of five dollars for each seal issued by it, pursuant to section five of this article which shall be collected from each mobile home manufacturer. All sums collected by the department pursuant to this article shall be paid into the treasury of the state.
§21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.

1 It shall be unlawful, from and after the effective date of this article, for any person to rent, sell, transfer or lease in this state or offer for rent, sale, transfer or lease in this state any mobile home unless such mobile home complies with the safety code and other rules and regulations adopted and promulgated by the department, nor shall any person so rent, sell, transfer or lease any such mobile home in this state unless it bears a seal issued by the department pursuant to section five of this article evidencing certification of the manufacturer that the mobile home so sold, rented, transferred or leased complies with the safety code and the other provisions of this article: Provided, That the provisions of this article dealing with the installation of smoke detection systems shall apply only to dealers in mobile homes in this state.

§21-9-9. Violation of article, rules or regulations; criminal and civil penalties.

(a) Any person, dealer or manufacturer who violates any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a term not to exceed one year, or both such fine and imprisonment. Each sale of a mobile home in violation of the provisions of this article or of such rules and regulations shall constitute a separate offense.

(b) If a dealer in mobile homes shall violate any of the rules or regulations promulgated by the department under the provisions of this article requiring the installation of a smoke detection system in any mobile home offered for sale in this state by such dealer, the purchaser of such mobile home has a cause of action to recover from such dealer a penalty in an amount of five hundred dollars, in addition to any other remedies to which he is entitled.
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 eleven-d, relating to governing and regulating the process by which films are to be distributed and selected for distribution to the theatres of this state; setting forth definitions; prohibiting blind bidding except with respect to certain theatres; requiring trade screenings; and establishing bidding procedures.

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 eleven-d, to read as follows:

ARTICLE 11D. THE MOTION PICTURE FAIR COMPETITION ACT.

§47-11D-1. Purpose.
§47-11D-3. Blind bidding prohibited; invitation to bid; provisions of article waived as to certain exhibitors.

§47-11D-1. Purpose.

1 The purpose of this article is to establish fair and open procedures for bidding and negotiating for the exhibition of motion pictures within this state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within this state; to promote fair and effective competition in that business; and to benefit the movie-going public by holding down admission prices to motion picture theatres, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or
unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibiting it.


1 When used in this article, unless the context indicates otherwise:

3 (1) "Person" includes one or more individuals, partnerships, associations, societies, trusts or corporations.

5 (2) "Theatre" means any establishment in which motion pictures are exhibited to the public regularly for a charge.

8 (3) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing.

11 (4) "Exhibitor" means any person engaged in the business of operating one or more theatres.

14 (5) "Exhibit" or "exhibition" means showing a motion picture to the public for a charge.

19 (6) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a motion picture.

24 (7) "Bid" means a written or oral offer or proposal by an exhibitor to a distributor, in response to an invitation to bid or otherwise, stating the terms under which the exhibitor will agree to exhibit a motion picture.

29 (8) "License agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor.

34 (9) "Trade screening" means a showing of a motion picture by a distributor, which showing is open to any of this state's exhibitors who are interested in exhibiting the motion picture.

39 (10) "Blind bidding" means the bidding for, negotiat-
ing for, or offering or agreeing to terms for the licensing
or exhibition of a motion picture before that motion
picture has been trade screened for this state’s exhib-
itors.

(11) “Run” means the continuous exhibition of a
motion picture in a defined geographic area for a speci-
fied period of time. A “first run” is the first exhibition
of a picture in the designated area, a “second run” is
the second exhibition and “subsequent runs” are all
exhibitions after the second run.

§47-11D-3. Blind bidding prohibited; invitation to bid; provi-
sions of article waived as to certain exhibitors.

(a) Blind bidding is hereby prohibited within this
state. No bids may be returnable, no negotiations for
the exhibition or licensing of a motion picture may take
place, and no license agreement or any of its terms may
be agreed to, for the exhibition of any motion picture
within this state before that motion picture has been
trade screened either within this state or, alternatively,
at the local exchange serving the geographic area within
this state for which bids have been invited.

(b) A distributor shall include in each invitation to
bid for a motion picture for exhibition within this state,
if such motion picture has not already been trade
screened within this state, the date, time and place of
the trade screening of the motion picture either within
this state or, alternatively, at the local exchange serving
the geographic area within this state for which bids
have been requested.

(c) A distributor shall provide reasonable and uniform
notice to all exhibitors in each competitive market within
this state of all trade screenings for that competitive
market of motion pictures he is distributing.

(d) The provisions of this article are waived with
respect to West Virginia exhibitors whose theatres are
located within twenty miles of a state line of a state
where a provision for prior trade screening before bidding
has not been adopted, so long as theatres exist within
the other state within twenty miles of the state line
between that state and West Virginia and no farther
than twenty miles from at least one West Virginia ex-
hibitor's theatre in the same competitive market. Any
other purported waiver of the requirements of this article
shall be void and unenforceable.


1 If bids are solicited from exhibitors for the licensing
of a motion picture within this state, then:

(1) The invitation to bid shall specify (i) the num-
ber and length of runs for which the bid is being
solicited, whether it is a first, second or subsequent run,
and the geographic area for each run; (ii) the earliest
availability date of the motion picture; (iii) the names
of all exhibitors who are being solicited; (iv) the date
and hour the invitation to bid expires; and (v) the loca-
tion, including the address, where the bids will be opened,
which shall be within the state, or at the local exchange
serving the geographic area for which the bids have been
requested.

(2) All bids shall be submitted in writing and shall be
opened at the same time and in the presence of those
exhibitors, or their agents, who submitted bids and are
present at such time.

(3) After being opened, bids shall be subject to exam-
ination by any exhibitors, or their agents, who submitted
bids. Within seven business days after a bid is accepted,
the distributor shall notify in writing each exhibitor who
submitted a bid of the terms of the accepted bid and the
name of the winning bidder. Bids shall be kept on file at
the local exchange for a period of sixty days after ac-
ceptance, and may be examined by any competitive exhib-
itor during that period during the regular business
hours of the local exchange.

(4) Once bids are solicited for a particular run, the
distributor may subsequently license the picture only by
bidding for that run and shall solicit rebids if he does
not accept any of the submitted bids.
AN ACT to amend and reenact sections eleven, twelve and fifteen, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring from the department of natural resources to the department of motor vehicles authority for motorboat registration and issuance of motorboat certificates of number; providing for use of fifty percent of fee proceeds to be used by the department of motor vehicles for administration of the program; providing for use of fifty percent of fee proceeds to be used by the department of natural resources for the state boating program; changing the annual license renewal requirement from a calendar year to fiscal year basis; removing authority to appoint county officials as license issuing agents; and authorizing the department of motor vehicles to deliver to motorboat dealers temporary certificates of number for issuance to purchasers.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve and fifteen, 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; MOTORBOATING.

Part II. Motorboating.

§20-7-11. Motorboats and other terms defined.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

§20-7-15. Dealers' and manufacturers' certificate of number; applications and fees.
PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

4 (1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not such motor is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto;

14 (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

21 (4) "Commissioner" means the commissioner of the department of motor vehicles; and

23 (5) "Director" means the director of the department of natural resources.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

1 Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided:
(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the commissioner on forms approved by the department of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of five dollars if propelled by a motor of three or more horsepower. There shall be no fee for motorboats propelled by motors of less than three horsepower. All such fees, including those received under subdivision (b) of this section, shall be deposited in the state treasury, and fifty percent shall be credited to the department of motor vehicles and shall be used and paid out upon order of the commissioner solely for the administration of the certificate of number system. The remaining fifty percent shall be credited to the department of natural resources and shall be used and paid out upon order of the director solely for the enforcement and safety education of the state boating system. Upon receipt of the application in approved form, the commissioner shall enter the same upon the records of the department and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the commissioner in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(b) In order to permit a motorboat sold to a purchaser by a dealer to be operated pending receipt of the certificate of number from the commissioner, the commissioner may deliver to dealers, upon application therefor and payment of one dollar for each, temporary certificates of number to in turn be issued to purchasers of motorboats. Every person who is issued a temporary certificate by a dealer shall, under the provisions of subdivision (a) of this section, apply for an annual certificate of number no later than ten days from the date of issuance of the temporary certificate. A temporary
certificate shall expire upon receipt of the annual certificate, upon recision of the contract to purchase the motorboat in question or upon the expiration of forty days from the date of issuance, whichever shall first occur. It is unlawful for any dealer to issue any temporary certificate knowingly containing any misstatement of fact, or knowingly to insert any false information on the face thereof. The commissioner may, by rule or regulation, prescribe such additional requirements upon such dealers and purchasers as are consistent with the effective administration of this section.

(c) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty-day reciprocity period provided for in section fourteen of this article. Such recordation shall be in the manner and pursuant to procedure required for the award of a number under subdivision (a) of this section, except that no additional or substitute number shall be issued.

(d) Should the ownership of a motorboat change, a new application form with fee shall be filed with the commissioner and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(e) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the department of motor vehicles shall be in conformity therewith.

(f) All records of the director made or kept pursuant to this section shall be transferred to the commissioner and shall be maintained as public records.

(g) Such license shall be valid only until the last day of June. If at the expiration of that date ownership has remained unchanged, such owner shall, upon application
and payment of the proper annual fee, be granted a re-
newal of such certificate of number for an additional one-
year period.

(h) The owner shall furnish the commissioner notice
of the transfer of all or any part of an interest, other than
the creation of a security interest, in a motorboat num-
bered in this state pursuant to subdivisions (a) and (b)
of this section, or of the destruction or abandonment of
such motorboat, within fifteen days thereof. Such trans-
fer, destruction or abandonment shall terminate the cer-
tificate of number for such motorboat, except that in the
case of a transfer of a part interest which does not affect
the owner's right to operate such motorboat, such trans-
fer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify
the commissioner within fifteen days if his address no
longer conforms to the address appearing on the certifi-
cate and shall, as a part of such notification, furnish the
commissioner with his new address. The commissioner
may provide rules and regulations for the surrender of
the certificate bearing the former address and its replace-
ment with a certificate bearing the new address or for
the alteration of an outstanding certificate to show the
new address of the holder.

(j) No number other than the number awarded to a
motorboat or granted reciprocity pursuant to this article
shall be painted, attached or otherwise displayed on
either side of the bow of such motorboat.

(k) It shall be the duty of the commissioner on or
before the thirtieth day of August of each year, commenc-
ing with the year one thousand nine hundred eighty, to
forward to the assessor of each county a list of the names
and addresses of all persons, firms and corporations own-
ing vessels and operating the same or other boats regis-
tered with the commissioner under the provisions of this
article. In furnishing this information to each county
assessor, the commissioner shall include such information
as to make, model, value and cost price of such vessels
and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: Provided, That the commissioner need not furnish such information to the assessor if the cost price of such vessel does not exceed two hundred dollars or the cost of the motor does not exceed one hundred seventy-five dollars. In order to deal equitably with overlapping license periods, the commissioner may issue a six months' license from the period January, one thousand nine hundred eighty through June, one thousand nine hundred eighty. The fee shall be one half of the annual fee.

(l) No person shall operate an unlicensed motorboat upon any waters of this state without first acquiring such certificate of number or license as required by law.

§20-7-15. Dealers' and manufacturers' certificate of number; applications and fees.

Dealers' and manufacturers' certificate of number, containing the word "manufacturer" or "dealer," as appropriate, may be used in connection with the operation of any motorboat in the possession of such dealer or manufacturer, when the boat is being used for demonstrative purposes. Application for a dealer's or manufacturer's certificate of number shall be made upon a form provided by the commissioner and shall contain such information as may be required by the commissioner. Upon receipt of the application and upon payment of a fee of five dollars for the initial certificate of number, and five dollars for each additional certificate of number, the commissioner shall issue to the applicant a manufacturer's or dealer's certificate of number which shall contain the word "manufacturer" or "dealer" in lieu of a description of the boat. The manufacturer or dealer may have the number awarded to him printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated, so long as the display meets the requirements of the provisions of this article and regulations issued hereunder.
AN ACT to amend and reenact section eleven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that an owner of any truck, truck tractor or road tractor paint or stencil the registered gross vehicle weight on the side of such vehicle.

Be it enacted by the Legislature of West Virginia:

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

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

§17A-3-11. Registration of vehicles according to permissible gross weight.

1 The commissioner, upon registering any truck, truck tractor or road tractor, under the laws of this state, may require such information and may make such investigation or test as necessary to determine whether such motor vehicle may safely be operated upon the highways in compliance with all the provisions of law relating to such vehicles. Every such vehicle shall be registered with a permissible gross weight under which the vehicle can safely be operated upon the highways, which weight may not exceed the limitations set forth in chapter seventeen-c of this code.

2 The commissioner shall include on the registration card issued for every such motor vehicle the gross weight for which it is registered, and if it is a motor vehicle to be used for propelling other vehicles, a separate listing of the total permissible gross weight of such motor vehicle and other vehicles to be propelled by it shall be included. The commissioner shall also cause to be printed or
stamped upon the registration card a statement that the vehicle although registered for the gross weight appearing on the registration card is subject to the axle load limit set forth in chapter seventeen-c of this code.

CHAPTER 77
(S. B. 94—By Mr. Colombo)

[Passed February 28, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on lamps on motor vehicles; authorizing members of volunteer ambulance services or duly chartered rescue squads to have red flashing warning lights on their Class A vehicles under certain conditions; and restricting tow trucks and wreckers to use of amber or yellow flashing warning lights.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or
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10 equipment upon any highway with any lamp or device
thereon displaying other than a white or amber light
visible from directly in front of the center thereof except
as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
lights are prohibited on motor vehicles, except on an
authorized emergency vehicle, school bus, snow removal
equipment or on any vehicle as a means for indicating
right or left turn, or on any vehicle as a means of indi-
cating the same is disabled or otherwise stopped for an
emergency.

21 (d) Notwithstanding any other provisions of this
chapter, the following color of flashing warning lights are
restricted for the use of the type of vehicle designated:

24 (1) Blue flashing warning lights are restricted to
police vehicles, except as authorized by section twenty-
seven of this article.

27 (2) Except as authorized by sections nineteen and
twenty-seven of this article, red flashing warning lights
are restricted to ambulances, fire-fighting vehicles, school
buses, Class A vehicles, as defined by section one, article
ten, chapter seventeen-a of this code, of those volunteer
firemen who are authorized by their fire chiefs to have
such lights and to Class A vehicles of members of
volunteer ambulance services or duly chartered rescue
squads who are authorized by their respective chiefs to
have such lights: Provided, That red flashing warning
lights attached to such Class A vehicles may be operated
only when responding to or engaged in handling an
emergency requiring the attention of such volunteer
firemen or members of such volunteer ambulance services
or chartered rescue squads.

32 (3) All other emergency vehicles, including tow
trucks and wreckers, authorized by this chapter and by
section twenty-seven of this article shall be restricted to
amber or yellow flashing warning lights.

46 It shall be unlawful for flashing warning lights of an
unauthorized color to be installed or used on a vehicle
other than as specified in this section, except that a police
vehicle may be equipped with either or both blue or red
warning lights.

CHAPTER 78
(Com. Sub. for H. B. 767—By Mr. Scott and Mr. Chambers)

[Passed March 7, 1979: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter
seventeen-d of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to requiring proof of
motor vehicle financial responsibility upon certain convictions;
and prohibiting suspension or revocation of vehicle registration
under certain conditions when driver’s license has been sus­

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE
FUTURE.

§17D-4-1. Proof required upon certain convictions.

(a) Except as provided in section six, article four, chapter
seventeen-d of this code, the commissioner, under any law of
this state, shall not suspend or revoke the registration of any
person, when the suspension or revocation of the driver’s
license was made pursuant to the provisions of section one,
article one-a, or section five, article three, or section three,
article four, all of chapter seventeen-b of this code, or section
eight, article six, chapter seventeen-c of this code.

(b) The suspension or revocation hereinbefore required
shall remain in effect and the commissioner shall not issue to
such person any new or renewal of license or register or re-
register in the name of such person as owner any such vehicle
until permitted under the motor vehicle laws of this state, and
not then unless and until such person shall give and thereafter
maintain proof of financial responsibility.

(c) If a person has no license, but by final order or judg-
ment is convicted of or forfeits any bail or collateral deposited
to secure an appearance for trial for any offense requiring the
suspension or revocation of license, no license shall be there-
after issued to such person and no vehicle shall thereafter be
registered in the name of such person as owner unless he shall
give and thereafter maintain proof of financial responsibility.

(d) Whenever the commissioner suspends or revokes a non-
resident’s operating privilege by reason of a conviction or for-
feiture of bail, such privilege shall remain so suspended or
revoked unless such person shall have previously given or shall
immediately give and thereafter maintain proof of financial
responsibility.

(e) If by final order or judgment a person is convicted of or
forfeits any bail or collateral deposited to secure an appearance
for trial for driving a motor vehicle upon the highways without
being licensed to do so; and it appears from the records of the
department that such conviction or forfeiture is the second
conviction or forfeiture for this charge, no license shall be
thereafter issued to such person unless he shall give and there-
after maintain for one year proof of financial responsibility.

CHAPTER 79
(Com. Sub. for H. B. 855—By Mr. Wright and Mr. Scott)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chap-
ter eight of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, allowing Class III cities to establish
and maintain an “employees retirement and benefit fund.”
Be it enacted by the Legislature of West Virginia:

That section two, 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.

§8-22-2. Class I, II and III cities empowered and authorized to establish and maintain "employees retirement and benefit fund" or to maintain such fund heretofore established.

Every Class I, II and III city which is not a participating public employer in the said West Virginia public employees retirement system is hereby empowered and authorized to and may establish and maintain an "employees retirement and benefit fund" in accordance with the provisions of this section two and sections three through fourteen of this article. Any Class I, II or III city which has heretofore established such a fund in accordance with the acts of the Legislature referred to in section fifteen of this article may continue to maintain said fund in accordance with the provisions of this section two and sections three through fourteen of this article, or said acts, as specified in said section fifteen.

CHAPTER 80

(S. B. 100—By Mr. Oates)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that a quorum be present in order to conduct a
planning commission meeting and authorizing official action by a majority of the members present at a planning commission meeting in lieu of the previously required majority of all members of the commission.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-four, 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 24. PLANNING AND ZONING.

§8-24-9. Quorum.

1 In order to conduct a commission meeting, a quorum of the members must be present. A majority of the members of a commission shall constitute a quorum. No action of a commission shall be official unless authorized by a majority of the members present at a regular or properly called special meeting.

CHAPTER 81

(H. B. 900—By Mr. Speaker, Mr. See, and Mr. Milleson)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including in the public policy of the state with respect to water pollution control that reasonable standards of water purity and quality are maintained consistent with the maintenance and expansion of agriculture.

Be it enacted by the Legislature of West Virginia:

That section one, article five-a, 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 5A. WATER POLLUTION CONTROL ACT.

PART I. GENERAL PROVISIONS AND PUBLIC POLICY.

§20-5A-1. Declaration of policy.

1 It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.

CHAPTER 82

(H. B. 715—By Mr. Caudle)

[Passed March 6, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing and personal care homes; definitions; and deleting the definition of "mental impairment" from the definitions as used in article five-c.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning appears from the context:

3 (a) The term "director" means the director of the West Virginia state department of health or his designee;

(b) The term "facility" means any nursing home or personal
care home as defined in subdivisions (c) and (d) of this section: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home or personal care home within the meaning of this article. Nothing contained in this article shall apply to hospitals, as defined under section one, article five-b of this chapter, or state institutions as defined under section six, article one, chapter twenty-seven or section three, article one, chapter twenty-five, all of this code, or institutions operated for the treatment and care of alcoholic patients, or offices of physicians, or hotels, boarding homes or other similar places that furnish to their guests only board and room, or extended care facilities operated in conjunction with a hospital;

(c) The term “nursing home” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for three or more persons who are ill or otherwise incapacitated and in need of nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation;

(d) The term “personal care home” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to six or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require nursing care;

(e) The term “nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated
which require technical skills and knowledge beyond that which
the untrained person possesses, including, but not limited to,
such procedures as: Irrigations; catheterization; application of
dressings; supervision of special diets; objective observation
of changes in patient condition as a means of analyzing and
determining nursing care required and the need for further
medical diagnosis and treatment; special procedure contribut-
ing to rehabilitation; administration of medication by any
method ordered by a physician such as hypodermically, rect-
ally, or orally and carrying out other treatments prescribed by
a physician which involve a like level of complexity and skill
in administration;

(f) The term “personal assistance” means personal services,
including, but not limited to, the following: Help in walking,
bathing, dressing, feeding, or getting in or out of bed, or super-
vision required because of the age or mental impairment of
the patient;

(g) The term “patient” means an individual under care in
a nursing home or personal care home;

(h) The term “sponsor” means the person or agency legally
responsible for the welfare and support of a patient;

(i) The term “person” means an individual and every form
of organization, whether incorporated or unincorporated, in-
cluding any partnership, corporation, trust, association or
political subdivision of the state.

The director may define in regulations any term used herein
which is not expressly defined.

CHAPTER 83
(S. B. 385—By Mr. Brotherton, Mr. President)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a and one-b,
article four, chapter twenty-two of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, all relating to the creation of an office of oil and gas within the department of mines; definitions; purposes; rules and regulations; administrator of the office of oil and gas; powers and duties; processing fee; public records; and eligibility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

§22-4-1a. Office of oil and gas—purposes; rules and regulations; administration; appointment; powers and duties; public records.

§22-4-1b. Administrator—eligibility.

§22-4-1. Definitions.

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

3 (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

6 (b) "Cement" means hydraulic cement properly mixed with water;

8 (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

11 (d) "Chief" means chief of the division of water resources of the department of natural resources;

13 (e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

16 (f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judg-
(g) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(h) "Department" or "department of mines" means, for purposes of this article and articles five and seven of this chapter, the office of oil and gas of the department of mines.

(i) "Administrator" means the head of the office of oil and gas of the department of mines and all references to the "deputy director" shall be defined to mean the administrator of the office of oil and gas.

(j) "Expanding cement" means any cement approved by the office of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;

(k) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;

(l) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (m) of this section;

(m) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;

(n) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;
(o) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(p) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(q) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(r) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

(s) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(t) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(u) "Stimulate" means any action taken by well operator to increase the inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;
(w) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined; and

(x) "Office of oil and gas" or "office" means the office of oil and gas within the department of mines charged with the responsibility of administering the provisions of chapter twenty-two, articles four, five and seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§22-4-la. Office of oil and gas—purposes; rules and regulations; administration; appointment; powers and duties; public records.

(a) There is hereby created, under the jurisdiction of the director of the department of mines, an office of oil and gas which shall have as its purpose the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles five and seven of this chapter.

(b) The office of oil and gas is authorized to enact rules and regulations necessary to effectuate the above stated purposes.

(c) There shall be an employee of the office of oil and gas whose title shall be "administrator of the office of oil and gas" who shall be appointed by the director of the department of mines to serve at the will and pleasure of the director and whose salary shall be set by the director. The administrator shall have full charge of the oil and gas matters set out in this article and in articles five and seven of this chapter, subject always to the direct supervision and control of the director of the department of mines. As such the administrator shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and not
more than twelve oil and gas inspectors upon approval by the director;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the office of oil and gas, and fix their compensation;

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles five and seven of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report to the director of the department of mines in such form and detail as the director may from time to time request, so that the director can complete the preparation of the director's annual report to the governor of the state;

(10) Conduct such research and studies as the director shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil
and gas-bearing rock strata and property used in connection therewith;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the "Natural Gas Policy Act of 1978," which are to be performed by a designated state jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said "Natural Gas Policy Act of 1978";

(12) Collect a filing and processing fee of twenty-five dollars for each well, for which a determination of qualification to receive a maximum lawful price under the provisions of the "Natural Gas Policy Act of 1978" is sought from the administrator; all revenues from such fees to be placed in the general revenue fund of the state;

(13) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties assigned to him by the director of the department of mines.

(d) All records of the department shall be open to the public.

§22-4-1b. Administrator—eligibility.

1 The administrator of the office of oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and be a registered professional engineer and shall have had at least ten years' practical experience in the oil and gas industry. A degree in geology or in mining or petroleum engineering shall be counted as two years' practical experience. The administrator shall devote all of his time to his duties, and shall not be directly or indirectly interested financially in any oil or gas production or drilling or in any coal mine in this state.
AN ACT to amend and reenact section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; failure to sell oil or gas; demand for payment of delay rental; rebuttable presumption of intention to abandon well and well equipment; continuation or enforcement of certain oil or gas leases to be opposed to public policy.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article four, 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 4. COVENANTS.

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

1 Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and leasee, shall be null and void as to such
oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided. except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease heretofore executed covering oil and/or gas, as against the owner of such oil and/or gas, or his subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association, or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last-known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located in whole or in part, and upon payment of a fee of fifty cents for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in his office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in his office the words "enforcement barred by notice."
The word "lessor" shall include the original lessor, as well as his or its successors in title to the oil and/or gas involved. The word "lessee" shall include the original lessee, his or its assignee properly of record at the time such demand is made, and his or its successors, heirs or personal representatives. No assignee of such lease whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There shall be a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to the first day of July, one thousand nine hundred seventy-nine, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators, and any other equipment used in the production of any oil and/or gas from any well or wells on said leasehold estate.

This rebuttable presumption shall not be created in instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental, or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption shall be created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or his subsequent lessee or assignee desires to terminate the right, interest, or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section,
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this presumption may not be utilized except in an action
or proceeding by the owner of the oil and/or gas or his
lessee or assignee in an action brought in the circuit court
for the judicial district in which the oil and/or gas prop-
erty is partially or wholly located. A certified copy of
a final order of the circuit court shall be mailed by the
clerk of such court to the deputy director for oil and gas
of the department of mines as defined in section one,
article four, chapter twenty-two of this code.

The continuation in force of any such lease after de-
mand for and failure to pay such delay rental or failure
to produce and sell, or to produce and use oil and gas for
a period of twenty-four months as hereinbefore set forth
is deemed by the Legislature to be opposed to public
policy against the general welfare. If any part of this
section shall be declared unconstitutional such declaration
shall not affect any other part thereof.

CHAPTER 85
(H. B. 928—By Mr. Tompkins)

[Passed March 6, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nine-a, chapter
six of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to enforcement by injunction;
voidability of actions taken or decisions made in violation of
article; making the enforcement by injunction applicable to the
entire article; changing “decision” to “decisions”; and pro-
viding for circumstances under which bond issues may not be
held void.

Be it enacted by the Legislature of West Virginia:

That section six, article nine-a, chapter six of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:
ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

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

The circuit court in the county where the public body regularly meets or the judge thereof in vacation shall have jurisdiction to enforce this article upon petition by any citizen of this state who can show good faith and a valid reason for making the application. No bond shall be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

Any injunction granted pursuant to the provisions of this section may order that actions taken or decisions made in violation of this article may be enjoined or annulled if the petition therefor was filed within thirty days after the actions were taken or decisions made and may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be held void under this section if notice of the meeting at which such bond issue was finally considered was given at least ten days prior to such meeting by a Class I legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

CHAPTER 86
(S. B. 5—By Mr. Colombo)

(Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section four-a, relating to limiting to five years the time period for which the department of natural resources may contract with private concerns for operation of commissaries, restaurants, recreational facilities and similar establishments in the state parks and public recreation system; authorizing renewal of such contracts at the discretion of the director for periods not exceeding five years; and providing for termination of contracts by the director.

Be it enacted by the Legislature of West Virginia:

That article four, 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 four-a, to read as follows:

ARTICLE 4. PARKS AND RECREATION.

§20-4-4a. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal at option of director; termination of contract by the director.

1 When it is deemed necessary by the director to enter into a contract with a person, firm or corporation for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, such contract shall be for a duration not to exceed five years, but a contract so made may provide for an option to renew at the director's discretion for an additional term or terms not to exceed five years at the time of renewal.

10 Any contract entered into by the director shall provide an obligation upon the part of the operator that he maintain a level of performance satisfactory to the director, and shall further provide that any such contract may be terminated by the director in the event he determines that such performance is unsatisfactory and has given the operator reasonable notice thereof.
AN ACT to amend and reenact sections two and thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to probation and parole generally; eligibility for parole and probation; powers and duties of parole board; allegations to be contained in an information or indictment; ineligibility for probation for certain offenses involving firearms; ineligibility for parole prior to the service of certain minimum terms for certain offenses involving firearms; and the definition of the term “firearm.”

Be it enacted by the Legislature of West Virginia:

That sections two and thirteen, 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. Probation; when eligible and ineligible therefor; definitions.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-2. Probation; when eligible and ineligible therefor; definitions.

(a) All persons who have not been previously convicted of a felony within five years from the date of the felony for which they are charged, and who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons whether previously convicted or not, who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eighteen and nineteen, article eleven, chapter sixty-one of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts
to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.

(c) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm shall not be applicable unless such fact is (i) found by the court upon a plea of guilty or nolo contendere, or (ii) found by the jury, if the matter be tried before a jury, or (iii) found by the court, if the matter be tried by the court, without a jury.

(d) For the purpose of this section, the term "firearm" shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, compressed air or gas, or any other similar means.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the prisoner will be subserved thereby, and subject to the limitations hereinafter provided, shall have the authority to release any such prisoner on parole for such terms and upon such conditions as are provided by this article. Any prisoner of a penitentiary of this state, to be eligible for parole:

(1) Shall have served the minimum term of his indeterminate sentence, or shall have served one third of his definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, be eligible for parole prior to serving a minimum of three years of his sentence or the maximum sentence imposed by the court,
whichever is less. Nothing in this section shall apply to an ac-
cessory before the fact or a principal in second degree who has
been convicted as if he were a principal in the first degree if, in
the commission of or in the attempted commission of the felony,
only the principal in the first degree used, presented or bran-
dished a firearm;

(2) Shall not be under punishment or in solitary confine-
ment for any infraction of prison rules;

(3) Shall have maintained a record of good conduct in
prison for a period of at least three months immediately pre-
ceeding the date of his release on parole;

(4) Shall have satisfied the board that, if released on
parole, he will conduct himself in a lawful manner and that his
release is not incompatible with the best interests and welfare
of society generally.

Except in the case of one serving a life sentence, no person
who has been previously twice convicted of a felony may be re-
leased on parole until he has served the minimum term provided
by law for the crime for which he was convicted. No person
sentenced for life may be paroled until he has served ten years,
and no person sentenced for life who has been previously twice
convicted of a felony may be paroled until he has served fifteen
years. In the case of a person sentenced to any penal institution
of this state, it shall be the duty of the board, as soon as such
person becomes eligible, to consider the advisability of his or
her release on parole. If, upon such consideration, parole be
denied, the board shall at least once a year reconsider and re-
view the case of every prisoner so eligible, which reconsidera-
tion and review shall be by the entire board. If parole be
denied, the prisoner shall be promptly notified.

(b) In the case of any person sentenced to or confined under
sentence in any city or county jail in this state, the board shall
act only upon written application for parole. If such jail prison-
er is under sentence on a felony conviction, the provisions here-
of relating to penitentiary prisoners shall apply to and control
his release on parole. If such person is serving time on a mis-
demeanor conviction, he is eligible for parole consideration,
upon receipt of his written parole application and after time for
probation release by the sentencing court or judge has expired.

(c) The board shall, with the approval of the governor,
adopt rules and regulations governing the procedure in the
granting of parole. No provision of this article and none of the
rules and regulations adopted hereunder are intended or shall
be construed to contravene, limit or otherwise interfere with or
affect the authority of the governor to grant pardons and re-
prieves, commute sentences, remit fines or otherwise exercise
his constitutional powers of executive clemency.

The board shall be charged with the duty of supervising all
probationers and parolees whose supervision may have been
undertaken by this state by reason of any interstate compact
entered into pursuant to the uniform act for out-of-state
parolee supervision.

(d) When considering a penitentiary prisoner for release
on parole, the board of parole shall have before it an authentic
copy of or report on the prisoner's current criminal record as
provided through the department of public safety of West
Virginia, the United States department of justice or other
reliable criminal information sources and written reports of
the warden or superintendent of the penitentiary, as the case
may be, to which such prisoner is sentenced:

(1) On the prisoner's conduct record while in prison, in-
cluding a detailed statement showing any and all infractions
of prison rules by the prisoner and the nature and extent of
discipline and punishment administered therefor;

(2) On improvement or other changes noted in the prisoner's
mental and moral condition while in prison, including a state-
ment expressive of the prisoner's current attitude toward society
in general, toward the judge who sentenced him, toward the
prosecuting attorney who prosecuted him, toward the policeman
or other officer who arrested him and toward the crime for
which he is under sentence and his previous criminal record;

(3) On the prisoner's industrial record while in prison,
showing the nature of his prison work or occupation and the
average number of hours per day he has been employed in
prison industry and recommending the nature and kinds of employment which he is best fitted to perform and in which he is most likely to succeed when he leaves prison;

(4) On physical, mental and psychiatric examinations of the prisoner conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

The board may waive the requirement of any such report when not available or not applicable as to any prisoner considered for parole but, in every such case, shall enter in the record thereof its reason for such waiver.

Before releasing any penitentiary prisoner on parole, the board of parole shall arrange for him to appear in person before the board and the board may examine and interrogate him on any matters pertaining to his parole, including reports before the board made pursuant to the provisions hereof. The board shall reach its own written conclusions as to the desirability of releasing such prisoner on parole. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the board of parole. All information, records and reports received by the board shall be kept on permanent file.

The board and its designated agents shall at all times have access to inmates imprisoned in any penal or correctional institutions of this state or in any city or county jail in this state, and shall have power to obtain any information or aid necessary to the performance of their duties from other departments and agencies of the state or from any political subdivision thereof.

The board shall, if so requested by the governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation thereon to the governor.

Prior to making such recommendation and prior to releasing any penitentiary person on parole the board shall notify the sentencing judge and prosecuting attorney at least ten days before such recommendation or parole.
AN ACT to amend article one, chapter thirty 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 limiting liability of members of peer review committees and professional standards committees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-16. Liability limitations of peer review committees and professional standards review committees.

1 No member of a peer review committee or a professional standards review committee of a state or local professional organization, including, but not limited to, committees established to review the practices of doctors of chiropractic, doctors of veterinary medicine, doctors of medicine, doctors of dentistry, attorneys at law, real estate brokers, architects, professional engineers, certified public accountants, public accountants or registered nurses shall be deemed liable to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter as to which such action is taken or recommendation is made.
AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons permitted to practice medicine and surgery in this state; licensing of practitioners from other states; temporary permits to practice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

The following persons and no others shall hereafter be permitted to practice medicine and surgery in this state: (a) All such persons as shall be legally entitled to practice medicine and surgery in this state including those persons holding temporary permits to practice in prescribed areas as of the effective date of this section; (b) all such persons as shall be graduates of medical schools, as approved by the medical licensing board of West Virginia, and who provide their original diplomas or evidence thereof for authentication by the medical licensing board, and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided: Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners issued within the previous eight years, or diplomate certificate from an American specialty board: Provided, however, That any certificate or license to practice which is granted by the board by virtue
of such diplomate certificate shall only be valid so long as the
holder thereof maintains such diplomate certificate in good
standing with the applicable American specialty board and no
longer and such certification shall be limited to that specific
specialty in the practice of medicine and surgery in this state,
or the certificate of license to practice medicine and surgery
legally granted by the state board of registration or examina-
tion or licensing board of another state or territory, whose
standard of qualification for the practice of medicine and sur-
gery is equivalent to that of this state, and grant to such ap-
plicant a certificate of license to practice medicine and surgery
in this state: Provided, however, That any physician who has
been certified by the educational council for foreign medical
graduates or who, as of the effective date of this section, holds
a temporary permit to practice in a prescribed area, shall not
when under the supervision of a licensed physician be in-
eligible for a temporary license permit to practice in any mental
health or state-owned facility and, in any hospital, clinic, phy-
sician's office and any other approved health care facility
until July one, one thousand nine hundred eighty-two, by virtue
of his failure to pass the medical examination prescribed by
the board, so long as such physician shall take said examina-
tion at least once each year: Provided, That any such physician
granted a temporary permit who fails to pass the medical
examination prescribed by the board before July one, one
thousand nine hundred eighty-two, shall be thereafter dis-
qualified from obtaining any further temporary permits in
this state: Provided, however, That after July one, one thou-
sand nine hundred eighty, no physician may be awarded a
temporary permit unless such physician was a bona fide
resident of this state for the six-month period preceding the
filing of his application for such temporary permit: Provided
further, That no one who does not hold a temporary permit
on or before the effective date of this section shall be eligible
for a temporary permit who has failed to pass the medical
examination or an examination equivalent to that given by the
medical licensing board on two or more occasions: Provided
further, That nothing herein shall prohibit any former tem-
porary permit holder from being certified as a physician as-
assistant pursuant to article three-a of chapter thirty: And pro-
vided further, That the board shall not limit the number of
times a physician may take the medical examination, and that
the said board is required to establish a program that will assist
all temporary license holders in preparing for and passing
the medical examination prescribed by it. Whenever in the
judgment of the medical licensing board a condition exists
in which medical service may be required, the said board is
authorized to grant permits for the practice of medicine to
qualified physicians in prescribed areas, and such permits
shall be subject to revocation when the agreement, under
which they were issued, has been violated.

A fee of one hundred fifty dollars shall accompany each
application for licensure by examination, reexamination or
reciprocity, twenty-five dollars of which shall be retained by the
board in the event an application is withdrawn or rejected.
A fee of twenty-five dollars shall accompany each application
for temporary permits and a fee of ten dollars shall accom-
pany each application for an extension thereof.

CHAPTER 90
(Com. Sub. for H. B. 1386—By Mr. Wooton)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article nine, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section four-a, provid-
ing for the organization of accounting corporations for the prac-
tice of public accounting, maintaining the accountant-client rela-
tionship and any liability arising therefrom; specifying that the
creation of an accounting corporation shall not affect ethical
standards of conduct; specifying that an accounting corpora-
tion may issue its capital stock only to duly licensed public ac-
countants or certified public accountants; relating to authoriza-
tion for accounting corporations by the West Virginia board of
accountancy; relating to fees; authorizing the West Virginia
board of accountancy to adopt rules and regulations in connec-
tion with accounting corporations; relating to issuance of certif-
icate of incorporation for an accounting corporation; establish-
ing restrictions upon the transfer of shares of stock in an ac-
counting corporation; and relating to corporate names of ac-
counting corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. ACCOUNTANTS.

§30-9-4a. Accounting corporations.

1 One or more individuals, each of whom is licensed to
2 practice public accountancy within this state, may orga-
3 nize and become a shareholder or shareholders of an ac-
4 counting corporation. Individuals who may be practicing
5 public accounting as an organization created otherwise than
6 pursuant to the provisions of this section may incorpor-
7 ate under and pursuant to this section. This section is not
8 intended to amend the statutory or common law as it re-
9 lates to associations or partnerships, except to allow part-
10 nerships of licensed public accountants or certified pub-
11 lic accountants to organize as an accounting corpora-
12 tion.

An accounting corporation may render professional service
only through officers, employees and agents who are themselves
14 duly licensed to practice public accounting within this state. 
15 The term "employee" or "agent" as used in this section, does
16 not include secretaries, clerks, typists or other individuals who
17 are not usually and ordinarily considered by custom and
18 practice to be rendering accounting services for which a license
19 is required.

20 This section does not modify the law as it relates to the
21 relationship between a person furnishing accounting services
22 and his client, nor does it modify the law as it relates to
23 liability arising out of such a professional service relationship.
24 Except for permitting an accounting corporation, this section
25 is not intended to modify any legal requirement or court rule
relating to ethical standards of conduct required of persons providing public accounting services.

An accounting corporation may issue its capital stock only to persons who are duly licensed public accountants or certified public accountants.

When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of article one, chapter thirty-one of this code.

The West Virginia board of accountancy may require that public accountants and certified public accountants under its licensing authority must obtain its prior authorization before beginning to act as an accounting corporation and may require a fee of not more than twenty-five dollars for each application for authorization to form an accounting corporation. The West Virginia board of accountancy may adopt rules and regulations:

1. To set reasonable standards for granting or refusing prior approval, (2) to require appropriate information therefor from an accounting corporation applicant, and (3) to notify the secretary of state that certain persons have been given authorization by the West Virginia board of accountancy to form an accounting corporation.

Upon notification by the West Virginia board of accountancy of its approval the secretary of state, upon compliance by the incorporators with this section and the applicable provisions of chapter thirty-one of this code, may issue to the incorporators a certificate of incorporation for the accounting corporation which then may engage in practice through duly licensed or otherwise legally authorized stockholders, employees and agents.

A shareholder of an accounting corporation may sell or transfer his shares of stock in such corporation only to another individual who is duly licensed to practice public accountancy in this state or back to the corporation.

The corporate name of an accounting corporation shall contain the last name or names of one or more of its shareholders: Provided, That if the rules or regulations of the West Virginia board of accountancy so permit the corporate name
may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words “accounting corporation” or the abbreviation “A.C.” The use of the word “company,” “corporation,” or “incorporated,” or any other words or abbreviations in the name of a corporation organized under this article which indicates that such corporation is a corporation, other than the words “accounting corporation” or the abbreviation “A.C.” is specifically prohibited.

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**CHAPTER 91**

(Com. Sub. for S. B. 488—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to the registration of architects; clarifying that partnerships, corporations and other business entities may engage in the practice of architecture under certain conditions; and providing that the professional relationship between architects and their clients remains unchanged.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 12. ARCHITECTS.**

§30-12-8a. Application of article to partnerships, corporations and other business entities; relationship of architects to clients.

1 Nothing contained in this article may be construed to preclude any partnership, corporation or other business
entity, whether heretofore or hereafter created, from en-
gaging in the practice of professional architecture in this
state so long as such practice is actually carried on by
architects registered in accordance with this article.

This section does not modify the law as it relates to the
relationship between an architect and his client, nor does
it modify the law as it relates to liability arising out of
such professional service relationship, and the person or
persons performing such architectural services shall re-
main personally liable for the architectural services they
perform for such corporation. This section is not intended
to modify any requirement, legal or otherwise, relating to
ethical standards of conduct required of persons providing
professional architectural services.

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CHAPTER 92
(H. B. 1420—By Mr. Reed, 10th District, and Mr. Holt)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the requirements for appli-
cants for a license to practice chiropractic; accreditation of
schools and colleges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

§30-16-4. Application for license; qualifications of applicant.

Any person wishing to practice chiropractic in this state
shall apply to the secretary of the board for a license so to
practice. Each applicant shall establish the fact to the board
that he has satisfied the following requirements: (a) That he
is eighteen years of age or over; (b) that he is of good moral
ccharacter; (c) that he is a graduate of an accredited high
school giving a four-year course or has an education equivalent
to the same; (d) that he has attended for at least two academic
years consisting of no less than sixty semester hours, an
academic college equal in standing to the West Virginia
University; (e) that he is a graduate of a chiropractic school
or college approved by the West Virginia board of chiroprac-
tic examiners and having status with an accrediting agency
recognized by the United States department of health, educa-
tion and welfare as an acceptable accrediting agency for
granting accreditation in chiropractic education in a resident
course of not less than four academic years of nine months
each, and active attendance at the same for a minimum of
four thousand hours of fifty minutes each of classroom and
laboratory instruction: Provided, That this requirement shall
not be construed to disqualify applicants that graduated from
chiropractic schools or colleges before the passage of this
article which taught a resident course of at least three aca-
demic years of eight months each or a minimum of two
thousand hours of fifty minutes each and required active
attendance upon the same, nor shall the requirement that a
chiropractic school or college have status with an acceptable
accrediting agency recognized by the United States department
of health, education and welfare as an acceptable accrediting
agency, be construed to disqualify any applicant, who, on
April ninth, one thousand nine hundred seventy-seven, was
enrolled in a chiropractic school or college then accredited
by the American chiropractic association or the international
chiropractic association: Provided, That such applicant at
the time of his enrollment in such school maintained bona
fide residence in the state. Attendance at the academic
college as set forth in requirement (d) shall be prior to
entrance into the chiropractic training as set forth in re-
requirement (e): Provided, however, That this requirement
of sequence of attendance at an academic college then chiro-
practic school or college shall not apply to those appli-
cants who at the time of passage of this article have com-
pleted or are in the process of fulfilling the requirements
set forth in (e) above; nor shall such requirement of se-
quence of attendance at an academic college then chiropractic
46 school or college apply to such applicants who have, sub-
47 sequent to the passage of this article, commenced the ful-
48 fillment of requirement (c) under the educational provi-
49 sions of the federal servicemen’s readjustment act now in
50 force or as may hereafter be amended, or such federal act
51 of similar effect, benefit or purpose as may hereafter be
52 enacted by the Congress.

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CHAPTER 93
(H. B. 1103—By Mr. Speaker, Mr. See)

(Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.)

AN ACT to amend and reenact article seventeen, chapter thirty of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to providing for a board of registra-
tion for sanitarians and prescribing its functions, qualifications,
appointment, compensation and expenses of members; registra-
tion of sanitarians and sanitarians-in-training; certificates of
registration; fees; revocation; expenditures of funds; and penalty.

Be it enacted by the Legislature of West Virginia:

That article seventeen, 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 17. SANITARIANS.

§30-17-1. State board of registration.
§30-17-2. Definitions.
§30-17-3. Registration of sanitarians required.
§30-17-4. Qualifications for registration.
§30-17-5. Qualifications for registration as a sanitarian-in-training.
§30-17-6. Examination for registration as a sanitarian.
§30-17-7. Board of registration for sanitarians.
§30-17-8. Terms of office.
§30-17-9. Board organization; duties of the board, officers, compensation,
               seal and meetings.
§30-17-10. Record of proceedings; register of applications; register of regis-
                tered sanitarians and sanitarians-in-training.
§30-17-1. State board of registration.

There is hereby created a board of registration to register qualified sanitarians whose duties in public health and environmental sanitation require a knowledge of physical, biological, and sanitary sciences or environmental health, and community hygiene and whose professional pursuits and duties are necessary to the promotion of life, health, and well-being of the community.

§30-17-2. Definitions.

The words and phrases defined below shall when used in this article, have the following meaning unless the context clearly indicates otherwise:

(a) "Board" means the board of registration for sanitarians hereby created.

(b) "Sanitarian" means a public health professional uniquely qualified by education in the arts and sciences, specialized training, and credible field experience to assist in the enforcement of public health laws and environmental sanitation regulations, and to effectively plan, organize, manage, evaluate and execute one or more of the many diverse disciplines comprising the field of public health and environmental sanitation.

(c) "Registered sanitarian" means a sanitarian registered in accordance with the provisions of this article.

(d) "Sanitarian-in-training" means a person who possesses the necessary educational qualifications as prescribed in this article for registration as a professional sanitarian, but who has not completed the experience requirements in the fields of environmental sanitation as required for registration.

(e) "Certificates of registration" means a document issued as evidence of registration and qualification to practice as a sanitarian or a sanitarian-in-training under this article, and bearing
the designation “registered sanitarian” or “sanitarian-in-training” and showing the name of the person, date of issue, serial number, seal and signatures of the members of the board hereby authorized to grant such certificates.

§30-17-3. Registration of sanitarians required.

On and after the first day of July, one thousand nine hundred seventy-seven, no person shall perform or offer to perform the duties of a sanitarian in this state without first applying for and obtaining from the state board of registration for sanitarians a certificate of registration as a sanitarian or a sanitarian-in-training.

§30-17-4. Qualifications for registration.

Any person desiring to be registered as a sanitarian may make application to the board on a form prescribed by the board. The board shall accept such application when submitted if accompanied by the required fees. Persons meeting the following qualifications shall be eligible for registration under this article:

(a) Graduate with a baccalaureate or higher degree from an accredited college or university, successfully completed a sanitarians’ training course of two hundred fifty to three hundred hours approved by the board of registration, employed full time as a sanitarian in an official health department for a period of not less than four years, and has passed an examination given and conducted by the board under the provisions of this article.

(b) A baccalaureate degree in chemistry, biology, physical science or agriculture may be substituted for one year of the required experience.

(c) A baccalaureate degree in environmental health, sanitary science or community hygiene may be substituted for two years of the required experience.

(d) A master’s degree in public health, environmental science, sanitary science or community hygiene may be substituted for three of the required years of experience.

(e) Any person who on or before the first day of July, one
§30-17-5. Qualifications for registration as a sanitarian-in-training.

Any person meeting the educational qualifications of section four, subdivisions (a), (b), (c), (d) of this article, but who does not meet the experience requirements of said section may make application to the board on a form prescribed by the board for registration as a sanitarian-in-training. The board shall accept such application when submitted, if accompanied by the required fees.

§30-17-6. Examination for registration as a sanitarian.

(a) On and after the first day of July, one thousand nine hundred seventy-nine, only persons who meet the education and experience requirements in section four, subdivisions (a), (b), (c), (d) of this article, shall be eligible for admission to examination for registration as a sanitarian.

(b) Examination for the registration of sanitarians-in-training may be required by the discretion of the board.

(c) Examination for registration of sanitarians under this article, shall be administered not less than once each calendar year, in the state at such times and places as may be specified from time to time by the board. Such examination may be written, oral, or both, and shall include applicable subjects in the field of environmental sanitation as it relates to public health and such other subjects pertinent to the qualifications of sanitarians such as, the board may prescribe, physical, biological and sanitary sciences or environmental health and community hygiene. The examination shall be objective and of practical character. The examination papers shall not disclose the name of any applicant, but shall be identified by a number assigned by the secretary of the board.

(d) A person shall not be registered if he fails to meet the minimum grade requirements for examination specified by the board. If an applicant fails to meet such minimum grade requirements in his first examination, he may be reexamined at any time and place specified by the board for the adminis-
tration of such examination and upon resubmitting his appli-
cation accompanied by the prescribed fees.

(c) The board shall hold at least one meeting each year
to review and evaluate applications for registration as sanitari-
ans and sanitarians-in-training, conduct examinations, review
and approve all bills, prepare and approve reports, and trans-
act all other business as may be necessary to carry out the
provisions of this article.

(f) The board shall issue certificates of registration to which
the official seal of the board has been affixed, and shall an-
ually issue numbered identification cards to applicants who
have been found qualified as sanitarians and sanitarians-in-
training.

(g) The board may hold hearings for the purpose of admin-
istrative adjudication of such matters as may properly come
before it, make the necessary determinations in conjunction
therewith and issue such orders as may be consistent with the
findings. The board may designate one or more of its members
as a hearing agent. Such agent or representative shall conduct
such hearings in the manner provided by law.

(h) Three members of the board shall constitute a quorum
and special meetings of the board shall be called by the secre-
tary upon written request of any two members of the board,
or upon a written request signed by ten registered sanitarians.

(i) All board meetings shall be open to any registered
sanitarian with the exception of the executive board sessions.

(j) The secretary of the board shall receive and account
for all money received from the operation of this article.

(k) The examination papers and records pertaining thereto
shall be filed with the board and retained for at least one year.

§30-17-7. Board of registration for sanitarians.

A board for the registration and examination of sanitarians
and sanitarians-in-training is hereby established to be known
as the board of registration for sanitarians. The board shall
consist of the state director of health, who shall be a member
ex officio and secretary of the board, and four registered sani-
tarians to be appointed by the governor, by and with the
advice and consent of the Senate. Each member appointed by
the governor shall have been engaged in active practice as a
registered sanitarian in this state for at least five years prior
to his appointment, and except in the case of the original mem-
ers of the board, shall have been registered in this state as a
registered sanitarian.

§30-17-8. Terms of office.

On or before the first day of July, one thousand nine
hundred seventy-nine, the governor shall name the four original
appointive board members for terms of one, two, three and four
years respectively, beginning on that date. Thereafter each
appointment shall be for a term of four years, except that an
appointment to fill a vacancy shall be for the unexpired
term. The governor, with the concurrence of the board, may
remove an appointive board member for misconduct in office,
incompetency, conflict of interest, neglect of duty or other
sufficient cause after due notice and hearing, if requested.

§30-17-9. Board organization; duties of the board, officers, com-
ensation, seal and meetings.

(a) The members of the board shall, as soon as appointed,
organize and annually thereafter in the month of July, elect
from their number a chairman and vice chairman.

(b) The board shall make such rules and regulations as
are necessary to carry out the provisions of this article.

(c) Funds collected under the provisions of this article
shall be used exclusively to pay compensation and expenses
of the board and to administer the provisions of this article.

(d) The board may at such times as it deems necessary
employ such administrative employees or other persons as may
be necessary to carry out the provisions of this article.

§30-17-10. Record of proceedings; register of applications; register
of registered sanitarians and sanitarians-in-training.

(a) The board shall keep a record of its proceedings.
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2 (b) The board shall maintain a register of all applications for registration, which shall show:

3 (1) The place of residence, name and age of each applicant;

4 (2) The date of application;

5 (3) Complete information of education and experience qualifications;

6 (4) The action taken by the board;

7 (5) The serial number of the certificate of registration and identification card issued to the applicant;

8 (6) The date on which the board reviewed and acted upon the application; and

9 (7) Such other pertinent information as may be deemed necessary by the board.

10 (c) The board shall maintain a current registry of all sanitarians and sanitarians-in-training in the state of West Virginia that have been registered in accordance with the provisions of this article.

§30-17-11. Application; fees; renewals, etc.

1 The board shall prescribe and provide an application form for use of all applicants. Applicants for registration as sanitarians shall deposit a fee of twenty dollars, and applicants for registration as sanitarians-in-training shall deposit a fee of ten dollars, at the time of making application for registration. The board may also assess an additional fee for the cost of the examination when deemed necessary. Should the board deny the issuance of a certificate to any applicant, the initial fee deposited shall be retained as a fee for processing and evaluating the application.

11 A sanitarian registered under the provisions of this article may renew his certificate by paying the board an annual renewal fee of ten dollars. Said fee shall be due and payable on or before the first day of July for which a renewal certificate for the current year shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations expired for failure to pay renewal fees may be
reinstated only upon the payment of all lapsed renewal fees: 
Provided, That the payment of such lapsed renewal fees shall not apply to any sanitarian who has not been a practicing sanitarian in this state for five or more years.

§30-17-12. Suspension or revocation of registration.

The board shall have the power to suspend or revoke, after due notice and proper hearing, a certificate of registration when the holder is found guilty of unprofessional conduct, the practice of fraud or deceit in obtaining a certificate of registration, dereliction of duty, conflict of interest, incompetence in the practice of environmental sanitation, malfeasance or misfeasance in office, any criminal, infamous, dishonest, immoral or notoriously disgraceful conduct, drug addiction or habitual use of intoxicants to excess, any acts which furnish reasonable grounds for belief by the board that the certificate holder may be subject to coercion, influence or pressure which may cause him to act contrary to the best interest of the profession, or for other good and sufficient cause. Notice of hearing in writing shall be given not less than thirty days prior to the date of the hearing, designating the time and place of hearing and providing the certificate holder with a copy of the charges against him. The person charged shall be entitled to be represented at the hearing and present evidence in his defense. Every order of the board causing the suspension or revocation of a certificate of registration shall be predicated on findings based upon the record of hearing; the determination of the board may be reviewed by a court only to determine whether the board abused its discretion or exceeded its jurisdiction.

§30-17-13. Reciprocity.

The board shall, upon application therefor, and upon payment of a fee of twenty dollars, issue a certificate of registration as a sanitarian to any person who holds a certificate of registration issued to him by the proper authority of any state, or territory, or possession of the United States, or any country: Provided, That the requirements for the registration of sanitarians under which the certificate was issued do not conflict with the provisions of this article and at the time said certificate was granted were of a standard not lower than those
specified in section four, subdivisions (a), (b), (c), (d) of this article.

§30-17-14. Use of title.

Only a person who has qualified as a registered sanitarian and who holds a valid current registration certificate for use in this state shall have the right and privilege of using the title, "registered sanitarian" and to use the abbreviation, "r.s." after his name.

§30-17-15. Violation; penalty.

It shall be unlawful for any person to represent himself as, or perform duties of a registered sanitarian without being duly registered and the holder of a currently valid certificate of registration issued by the board.

On and after the first day of July, one thousand nine hundred seventy-nine, each person practicing as a sanitarian shall hold a valid certificate as a registered sanitarian or sanitarian-in-training.

A person who violates the provisions of this article is, upon conviction thereof, guilty of a misdemeanor, and shall be punished by a fine not to exceed two hundred dollars, or imprisoned for not more than thirty days, or both. Magistrates shall have concurrent jurisdiction with circuit courts to enforce the provisions of this article. In addition, the board is authorized and empowered to apply to any court having equity powers, or to the judge thereof in vacation, for an injunction to restrain any violation of the provisions of this article.

CHAPTER 94

(H. B. 1428—By Mr. Speaker, Mr. See, and Mr. Bryan)

[Passed March 10, 1979; in effect from passage. 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 increasing the
amount of temporary reemployment compensation that a retiree may receive, and continue to receive his annuity.

*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 participating public employer, payment of his annuity shall be suspended during the period of his reemployment and he shall become a contributing member to the retirement system. If his reemployment is for a period of one year or longer, his annuity shall be recalculated and he shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article.

2. A retirant may accept temporary employment from a participating employer so long as he shall not receive compensation in excess of forty-two hundred dollars per year and continue to draw his annuity.

**CHAPTER 95**

(Com. Sub. for S. B. 260—By Mr. Hamilton and Mr. Williams)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article four, chapter twenty of said code by adding thereto a new section, designated section thirteen; and to amend article one, chapter twenty-nine of said code by adding thereto a new section, designated section thirteen, all relating to transferring title in a portion of the Washington-Carver Camp from the board of regents to the department
of culture and history; directing that certain development thereof be made; directing that the department make the camp available to other governmental agencies in certain instances; transferring title to the remaining portion of the camp to the department of natural resources; directing that the board of regents act promptly; reserving to the board of regents certain interests in deeds; and prohibiting disposition or removal of minerals without authorization by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
20. Natural Resources.
29. Miscellaneous Boards and Officers.

CHAPTER 18. EDUCATION.

ARTICLE 13. WEST VIRGINIA STATE COLLEGE.
§18-13-1. Continuation and management; courses and degrees; rules and regulations.

1 The institution for the instruction of students hereto­fore established and located at Institute, in Kanawha County, shall be continued and shall be known as the "West Virginia State College." The business and educa­tional affairs of said college shall be under the control, supervision and management of the state board of edu­cation, as provided in section thirteen, article two of this chapter.

9 The state board of education shall establish and main­tain in the West Virginia State College, in addition to the courses of study leading to a bachelor of science or
bachelor of arts degree, such professional and preprofessional courses of study as may be expedient and practicable, and shall prescribe the conditions for graduation therefrom and make rules for the conferring of degrees and for issuing the proper diplomas to those who successfully complete such courses.

The rules and regulations made by the president and faculty of said college for its general government, for the admission of students thereto, the standards of scholarship to be maintained therein and the graduation of students therefrom, shall be submitted to the state board of education for its approval.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 4. PARKS AND RECREATION.

§20-4-13. Transfer of portions of Washington-Carver Camp to department of natural resources; board of regents to act promptly; reservation of interests by the board of regents; prohibition of disposition or removal of minerals without authorization by the Legislature.

The board of regents shall transfer to the department of natural resources the title and all interests, not herein excepted, to that portion of the Washington-Carver Camp in Fayette County which is not transferred to the public land corporation of West Virginia under section thirteen, article one, chapter twenty-nine of this code. Such property transferred to the department of natural resources shall be used to expand recreational activities at Babcock State Park. The board of regents shall have the necessary documents prepared and executed promptly and shall cooperate fully to expedite the transfer and the improvement of the property. The deed shall contain a provision to reserve unto the board of regents all rights and interests in the timber, and all minerals together with the right of ingress and egress to mine, remove and take away the timber and minerals from the property. The board of regents shall not assign, lease, or otherwise encumber, sell, mine, remove, or permit removal of, any
mineral or minerals from the property without specific authorization by the Legislature.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-13. Transfer of portions of Washington-Carver Camp to public land corporation for department; development; board of regents to act promptly; reservation of interests by the board of regents; prohibition of disposition or removal of minerals without authorization by the Legislature.

The board of regents shall transfer to the public land corporation of West Virginia for control, administration and supervision by the department the title and all interests, not herein excepted, to the Washington-Carver Camp in Fayette County: Provided, That such transfer shall be at least thirty acres and such additional acreage, subject to the approval of the governor, that the commissioner of the department of culture and history may determine necessary to adequately operate and maintain such a camp and facilities related thereto and shall also include that portion of the camp upon which capital improvements, including roads, have been made. All remaining property shall be transferred to the department of natural resources as provided in section thirteen, article four, chapter twenty of this code. The department shall undertake to develop such cultural and multicultural, artistic, humanistic and educational programs at the camp as will serve and benefit the citizens of the state and the many cultures represented therein. In order to ensure the maximum reasonable utilization of that portion of the camp under its jurisdiction, the department, during times it is not being used for its purposes, make it available, under such terms as it deems proper, to any other agency of government or nonprofit group desiring to use it. The camp shall retain the name “Washington-Carver Camp” as indicative of its heritage of serving the black citizens of the state. The department is authorized to provide necessary and suitable equipment and other resources for implementing the provisions of this section. The board of regents shall have the necessary documents
prepared and executed promptly and shall cooperate fully
to expedite the transfer and the development of the
property. The deed shall contain a provision to reserve
unto the board of regents all rights and interests in the
timber, and all minerals together with the right of ingress
and egress to mine, remove and take away the timber and
minerals from the property. The board of regents shall
not assign, lease, or otherwise encumber, sell, mine, re-
move, or permit removal of, any mineral or minerals
from the property without specific authorization by the
Legislature.

CHAPTER 96
(Com. Sub. for H. B. 1381—By Mr. Speaker, Mr. See)
[Passed March 6, 1979; in effect July 1, 1979. 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 salaries of mem-
bers of the department of public safety; and providing for
clarification of the limits of leave time to be granted to
members for duty training in the national guard or the reserve
components of the armed forces of the United States.

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.

Members of the department of public safety shall receive
annual salaries pursuant to appropriation by the Legislature,
payable at least monthly as follows:

Any lieutenant colonel shall receive an annual salary of
twenty-two thousand twenty dollars; any major shall receive an annual salary of nineteen thousand nine hundred thirty-two dollars; any captain shall receive an annual salary of eighteen thousand three hundred twenty-four dollars; any lieutenant shall receive an annual salary of seventeen thousand two hundred eight dollars; any master sergeant or first sergeant shall receive an annual salary of sixteen thousand three hundred sixty dollars; any corporal shall receive an annual salary of fourteen thousand five hundred thirty-two dollars; any trooper first class shall receive an annual salary of thirteen thousand six hundred fifty-six dollars; and any newly enlisted trooper shall receive a salary of nine hundred eighty-eight dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each such trooper shall receive, during the remainder of his first year's service, a salary of one thousand sixty-eight dollars monthly. During the second year of his service in the department each such trooper shall receive an annual salary of thirteen thousand one hundred four dollars; during the third year of his service each such trooper shall receive an annual salary of thirteen thousand three hundred eight dollars; and during the fourth year and fifth year of such trooper's service and for each year thereafter he shall receive an annual salary of thirteen thousand four hundred eighty-eight dollars. Each member of the department whose salary is specified herein shall receive and be entitled to an increase in salary over that hereinbefore set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the department, as follows: At the end of five years of service with the department, such member shall receive a salary increase of three hundred dollars to be effective during his next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such
salaries as the same length of service will entitle them to receive under the provisions hereof.

The Legislature finds and declares that there is litigation pending in the circuit court of Kanawha County on the question whether members of the department of public safety are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of members of the department, it is not appropriate to apply said wage and hour provisions to them. Accordingly, members of the department of public safety are hereby excluded from the provisions of said wage and hour law. The express exclusion hereby enacted shall not be construed as any indication that such members were or were not heretofore covered by said wage and hour law.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training may receive supplemental pay as hereinafter provided.

The superintendent shall, within thirty days after the effective date hereof, promulgate a rule or regulation to establish the number of hours per month which shall constitute the standard work month for members of the department. Such rule or regulation shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of such supplemental payment when hours are worked in excess of such standard work month. Such rule or regulation shall be promulgated pursuant to the provisions of chapter twenty-nine-a of the code. The superintendent shall certify monthly to the department's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.

The supplemental payment shall be in an amount equal to one and one-half percent of the annual salary of a trooper during his second year of service, not to exceed one hundred seventy-five dollars monthly. The superintendent and civilian employees of the department shall not be eligible for any such supplemental payments.
Each member of the department, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his duties and such bond shall be approved as to form by the attorney general and to sufficiency by the governor.

Any member of the department who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted upon request leave time not to exceed thirty calendar days for the purpose of performing such active duty for training or inactive duty training, and the time so granted shall not be deducted from any leave accumulated as a member of the department.

CHAPTER 97

(Com. Sub. for S. B. 473—By Mr. Brotherton, Mr. President)

[Passed March 8, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety generally; creating procedures for appeals; convening appeals boards and selection of board members by lot; authorizing members of the appeals boards to administer oaths; subpoena witness and require the production of books and records; no liability for testimony; and providing for contempt proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-6. Departmental appeals boards; appeal procedures.

Appeals of transfers, suspensions, demotions in rank and
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2 discharges shall be heard by boards of appeals convened
3 pursuant to the provisions of this section. The boards shall
4 each consist of seven members and five members shall
5 constitute a quorum. A new board shall be convened to
6 hear and determine each new appeal filed by a member
7 of the department. There may be more than one board
8 in existence at the same time meeting on different appeals.
9 A member of the retirement board is eligible to serve on
10 an appeals board.

11 The members of a board shall be chosen by lot by the
12 superintendent with one member to be so chosen from
13 among all the members of each of the seven ranks of
14 trooper through lieutenant, inclusive. No department
15 member may serve on an appeals board if his rank is the
16 same, or if he is a member of the same detachment, as the
17 member making the appeal. If the person making the
18 appeal is a member of one of the ranks of lieutenant
19 through trooper, inclusive, then a captain shall be chosen
20 by lot from among all members of that rank to serve on
21 the board. Within ten days after he has been notified of
22 his selection and assignment to serve on a board, a mem-
23 ber may for cause request to be relieved of such assign-
24 ment. The superintendent shall determine whether the
25 reasons alleged by the member are sufficient cause to re-
26 lieve the member of such assignment. If such request is
27 granted by the superintendent, a new board member shall
28 be selected by lot from the same rank to replace the mem-
29 ber who has been relieved of such assignment.

30 A chairman shall be selected by the members of the
31 board. Each member of a board shall be reimbursed for all
32 reasonable and necessary expenses actually incurred in
33 attending meetings of a board. All expenses of a board
34 shall be paid from appropriations to the department.

35 Within fifteen days after a member of the department
36 has received a notice of transfer or a statement of charges
37 and an order of suspension, demotion in rank or discharge
38 by the superintendent, he may appeal the transfer
39 or order to an appeals board by filing a written
40 notice of appeal with the superintendent. The super-
intendent shall promptly record and file each appeal, select a board, notify each new board member of his selection, and furnish to each board member a copy of the notice or order appealed from and the notice of appeal. A hearing by a board of appeals shall be held within thirty days after the superintendent has received a member's notice of appeal. At least fifteen days prior to the hearing date, the board shall notify the superintendent and the member making the appeal of the date, time and place of the hearing.

Any member of the department who makes such an appeal, as aforesaid, may be represented by an attorney or by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund. The superintendent may be represented by counsel of his choice. In the appeal of a transfer, the member has the burden of proof that the transfer is not for the purpose of the operational needs of the department. In any other appeal the superintendent has the burden of proof as to the charges alleged. The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses, subpoena witnesses and compel the production of books and papers pertinent to any appeal or hearing authorized by this section.

If any person subpoenaed to appear at any appeal or hearing shall refuse to appear, or shall refuse to answer inquiries propounded at the appeal or hearing or shall fail or refuse to produce books and papers which have been subpoenaed which are pertinent to any appeal or hearing authorized by this section, the board shall report the facts to the circuit court of Kanawha County or the circuit court of any county in which the hearing is being conducted and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance. A person giving testimony at an appeal or hearing authorized by this section shall not
be liable for such testimony given in good faith and without malicious intent.

The board shall designate a reporter for any such hearing who shall record and transcribe all the proceedings. Upon his demand, the member making the appeal shall have a public hearing on the charges and in the absence of such demand, the board may determine whether or not the hearing should be public. Any hearing may be continued, recessed or adjourned by the board.

The superintendent shall provide reasonable space for the conduct of hearings. The charges of the reporter shall be paid by the superintendent from available appropriations. At the conclusion of the hearing, the board shall determine whether or not the superintendent’s order shall be sustained. The board’s decision shall be issued in writing, with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. A hearing shall be conducted by at least five members of the board and the decision of the board shall be made by the majority vote of all the members of the board.

Either party aggrieved by a decision of a board of appeals may appeal the decision to the circuit court of Kanawha County within sixty days of receipt of a copy of the board’s decision.

The court shall hear the appeal upon the record and determine all questions submitted to it on appeal.

In the event any decision sustaining the superintendent’s order or notice is reversed upon judicial review, which reversal is final, the superintendent shall return the member to his status prior to the superintendent’s order or notice, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order or notice and the date of the final judicial decision reversing the decision of the board.
AN ACT to amend and reenact article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to amend and reenact sections one, three, four, seven, eight, eleven, thirteen and fifteen, article two of said chapter twenty-four; to further amend said article two by adding thereto three new sections, designated sections three-a, four-a and four-b; to amend and reenact sections six and seven, article three of said chapter twenty-four; to amend and reenact section one, article five of said chapter twenty-four; to amend and reenact section five, article two, chapter twenty-four-a of said code; to further amend said article two by adding thereto a new section, designated section two-a; to amend and reenact section six, article six of said chapter twenty-four-a; to amend and reenact section six, article four, chapter twenty-four-b of said code; and to amend and reenact sections one, two and three, article five of said chapter twenty-four-b, all relating to reorganization, composition, authority and operations of the public service commission; providing a legislative purpose and policy for regulating the operations of public utilities; requiring annual reports to the Legislature; creating a legislative oversight committee to monitor the public service commission; requiring that certain studies be made relating to natural gas and electric utilities; requiring the public service commission to submit a reorganization plan to the Legislature; mandating certain items to be included in such plan; requesting information on whether certain staff members of public service commission should be exempt from present civil service pay plans; providing for the reorganization plan to be effective unless disapproved by the Legislature; definitions; defining customers; reconstituting the public service commission; providing for the appointment and reappointment of the public service commissioners and their qualifications and salaries; providing grounds for their removal from office; allowing the public service commission chairman to serve as chairman at the will and pleasure of the governor;
requiring the general office of the commission to be located anywhere in the seat of government; deleting specified office hours for the commission; removing the decision making meetings of the public service commission from the state open meetings law; requiring that the orders of the commission include findings of fact and conclusions of law; allowing the commission to hire its own legal counsel; requiring hearing examiners to submit recommended orders to parties; allowing parties to a hearing before the commission an opportunity to submit proposed findings of fact, conclusions of law and briefs; allowing said parties the opportunity to file exceptions to the recommended orders and permitting oral arguments thereon; providing that the recommended order become the order of the commission if no exceptions have been timely filed; permitting pre-trial conferences, stipulations and depositions; limiting the authority of the commission to review and approve the rates and charges of municipally operated utilities; providing that a single hearing examiner decide public service district rate cases; requiring public utilities to give thirty days' notice prior to filing for a rate increase unless the commission waives the requirement; providing a new procedure for public utilities to change rates including elimination of rates being put into effect subject to refund except in limited, specific situations; providing a procedure of receivership for utilities and the appointment of a receiver; providing for the return of the utility after receivership and for the liquidation of the assets in certain cases; mandating the establishment of a uniform system of accounts and accounting for all public service districts and municipally owned utilities; requiring the public service commission to render a decision on applications for a certificate of public convenience and necessity within a certain time period; providing for the enforcement of certain federal acts; prohibiting rate increases based on automatic fuel adjustment clause; allowing the governor to designate the public service commission as the responsible or enforcing agency in this state for the enforcement of certain future federal acts; increasing the special license fees; requiring a permit from the public service commission prior to abandoning service; revising procedures for appeal; providing that all service penalties collected for violation of the gas pipeline safety provisions
be paid into the state treasury; removing specific organizing references in the supervision of gas pipeline safety; prohibiting the filing for a rate increase when a previous application for an increase is still pending before the commission; and providing for certain penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter
24A. Motor Carriers of Passengers and Property for Hire.
24B. Gas Pipeline Safety.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article
2. Powers and Duties of Public Service Commission.
3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.
5. Review of Commission’s Action.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.
§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

1. Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

2. Provide the availability of adequate, economical and reliable utility services throughout the state;

3. Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

4. Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services; and

5. Encourage energy conservation and the effective and efficient management of regulated utility enterprises.

(b) The Legislature creates the public service commission
to exercise the legislative powers delegated to it. The public service commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state’s economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature encourages the public service commission to explore and consider the potential benefits or risks associated with the adoption in this state of emerging concepts in utility rate making, service standards and rate design. The commission is directed to conduct inquiries and hearings into such concepts as cost of service, declining block rates, time-of-day rates, peak load pricing, seasonal rates, lifeline rates, interruptible rates, load management techniques, master metering, automatic adjustment clauses, information to consumers concerning rate schedules, procedures for termination of service and advertising.

The public service commission shall report to the governor and the Legislature regarding its policies and approach to each of these areas not later than the first day of January, one thousand nine hundred eighty-two.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the public service commission. To aid in the achievement of this policy, the public service commission annually shall present to the joint committee on government and finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and a forecast of the probable balance for the next ten years; and
(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the public service commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty, upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells, their probable extent of future production and the reasons given and any justification for, capping off or shutting in such wells, the reasons if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the appalachian areas have been discouraged from drilling, developing or selling the production of such wells and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates heretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty,
the public service commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the public service commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the public service commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the public service commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing
and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the public service commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the public service commission of the joint committee on government and finance in a final report dated February, one thousand nine hundred seventy-nine and entitled "A Plan For Regulatory Reform and Management Improvement."

The commission shall before the fifth day of January, one thousand nine hundred eighty, adopt said plan by order which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than the thirty-first day of December, one thousand nine hundred eighty. Certified copies of such order and rule shall be filed on the first day of the regular session of the Legislature, one thousand nine hundred eighty, by the chairman of the commission with the clerk of each house of the Legislature, the governor and the secretary of state. The chairman of the commission shall also file with the office of the secretary of state the receipt of the clerk of each house and of the governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committees.

Within the limits of funds appropriated therefor, the rule of the public service commission shall be effective upon the
date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment sine die of the regular session of the Legislature to be held in the year one thousand nine hundred eighty: Provided, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The public service commission is hereby directed to cooperate with the joint committee on government and finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the railroad safety division of the public service commission and any similar studies.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context the words “public utility” when used in this chapter shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words “commission” or “public service commission” occur such word or words shall, unless a different intent clearly appears from the context, be taken to mean the public service commission of West Virginia. Whenever used in this chapter, “customer” shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale.
§24-1-3. Reconstitution and composition of the public service commission; appointment, qualifications, and disqualification of commissioners; removal from office; terms of office; vacancies.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office, or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions
of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioners be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) For the administration of this chapter, chapter twenty-four-a and chapter twenty-four-b of this code, each commissioner shall receive a salary of twenty-six thousand five hundred dollars a year payable in equal monthly installments for the duration of the terms expiring the thirtieth day of June, one thousand nine hundred seventy-nine. Effective the first day of July, one thousand nine hundred seventy-nine, for the administration of this chapter, chapter twenty-four-a and chapter twenty-four-b of this code, each commissioner shall receive a salary of thirty-two thousand five hundred dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, twenty-five thousand one hundred forty dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, six thousand one hundred thirty-five dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand two hundred twenty-five dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive two thousand
five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter.

§24-1-4. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.

The commission shall appoint a secretary and such other employees as may be necessary to carry out the provisions of this chapter and shall fix their respective salaries or compensations. It shall be the duty of the secretary to keep a full and true record of all proceedings, acts, orders and judgments of the commission, to issue all necessary process, returns and notices, to keep all books, maps, documents and papers ordered filed by the commission, and all orders made by the commission or approved and confirmed by it and ordered to be filed; and he shall be responsible to the commission for the safe custody and preservation of all such documents in his office. He may administer oaths in all parts of the state, so far as the exercise of such power is properly incidental to the performance of his duty or that of the commission.

The commission may designate such of its employees as it deems necessary to hold hearings, held or required by this chapter, and to take evidence at such hearings, which employees are hereby empowered to subpoena witnesses, administer oaths, take testimony, require the production of documentary evidence and exercise such other powers and perform such other duties as may be delegated to them and required by the commission, in any proceeding or examination instituted or conducted by the commission under this chapter, at any designated place of hearing within the state.

Any commissioner or person employed by the commission other than on a part-time basis shall devote full time to the performance of his duties as such commissioner or employee during the regular working hours as set by the commission.

§24-1-5. Seal to be adopted; collection and disposition of fees.

The commission shall adopt a seal which shall be affixed
to all papers under such regulations as the commission may
prescribe. The commission shall likewise prescribe a schedule
of fees to be charged for the certification of all records and
papers, and sums to be paid witnesses and other costs neces-
sary and incident to hearings before it and order the same paid
by the unsuccessful party. All sums collected by the secretary,
except witness fees, shall be paid by him into the state trea-
sury and be credited to the public service commission fund
provided for in section six, article three of this chapter. The
witness fees shall be paid to the person to whom they are al-
lowed. The sums to be paid into the public service commission
fund representing the collection of any month shall be so
paid on or before the tenth of the following month.

§24-1-6. Office of commission; time and place of hearings; num-
ber of commissioners required for taking action.

The general office of the commission shall be kept at the
seat of government and in charge of the secretary or his de-
puty. Hearings and the taking of evidence may be had at such
times and places and in such manner in each particular case
as the commission may designate.

The concurrent judgment of two of the commissioners,
when in session as the commission, shall be deemed the action
of the commission, and a vacancy in the commission shall not
affect the right or duty of the remaining commissioners to
function as a commission.

§24-1-7. Rules of procedure; commission not bound by rules of
evidence or pleadings; deliberations private; inscrip-
tion on, use of and judicial notice of seal.

The commission shall prescribe such rules and regulations
as may be necessary to carry out the provisions of this chapter,
including rules of procedure and for taking evidence in all
matters that may come before it, and enter such orders as may
be just and lawful: Provided, That no such rule or regulation
shall be effective unless promulgated pursuant to the provi-
sions of sections one through ten, article three, chapter twenty-
nine-a of this code: Provided, however, That no such rule or
regulation shall become effective until sixty days after its
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final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code. In the investigations, preparations and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it.

Meetings of the commission during which it makes a decision or deliberates toward a decision on any matter are exempt from the requirements of article nine-a, chapter six of this code, notwithstanding any other provisions of this code to the contrary.

All orders of the commission shall set forth separately findings of fact and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings.

The commission shall have a seal bearing the following inscription: "The Public Service Commission of West Virginia." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

§24-1-8. Legal counsel for the commission.

The commission may employ counsel to represent it in proceedings before it on application, complaint or otherwise, and proceedings of any nature in any and all courts or before administrative or executive boards and to act as legal advisers to the commission in all matters for which their services, in the opinion of the commission, are required. The compensation of such counsel shall be fixed by the commission and shall be paid as are other employees of the
commission. The commission shall notify the attorney general of any action or suit brought against the commission.

§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.

(a) Any order recommended by a single hearing commissioner, a hearing examiner or a panel consisting of a hearing examiner and a single commissioner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings, and shall be filed with the commission. A copy of such recommended order shall be served upon the parties who have appeared in the proceeding.

(b) Before any order is recommended, the parties shall be afforded an opportunity to submit, within the time prescribed by the hearing commissioner, hearing examiner or panel proposed findings of fact and conclusions of law and briefs.

(c) Within the time prescribed, the parties shall be afforded an opportunity to file exceptions to the recommended order and a brief in support thereof, provided the time so fixed shall be not less than fifteen days from the date of mailing by certified mail of such recommended order to the parties.

(d) In all proceedings in which exceptions have been filed to a recommended order, the commission, before issuing its final order, may afford the parties an opportunity for oral argument. When exceptions are filed, as herein provided, it shall be the duty of the commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary or proper to carry out the purposes of this chapter. The commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order thereon.

(e) When no exceptions are filed within the time specified,
such recommended order shall become the order of the com-
mission five days following the expiration of the period for
filing exceptions unless the order is stayed or postponed by the
commission: Provided, That the commission may, on its own
motion before such order becomes the order of the com-
mission, review any such matter and take action thereon as if
exceptions thereto had been filed.

(f) The commission, a hearing commissioner, a hearing
examiner or panel to whom a matter is referred may expedite
the hearing and decision of any case if the public interest so
requires by the use of pre-trial conferences, stipulations and
agreements, prepared testimony, depositions, daily transcripts
of evidence, trial briefs and oral argument in lieu of briefs,
as appropriate.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COM-
MISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.
§24-2-3. General power of commission with respect to rates.
§24-2-3a. Advance notice of filing of general rate case required.
§24-2-4. Procedure for changing rates prior to July one, one thousand nine
hundred eighty-one.
§24-2-4a. Procedure for changing rates after June thirtieth, one thousand nine
hundred eighty-one.
§24-2-4b. Procedures for changing rates of municipally operated public utili-
ties; filing requirements; limited public service commission
authority.
§24-2-7. Unreasonable, etc., regulations, practices and services; receivership;
procedures respecting receivership; appointment and compensation
of receiver; liquidation.
§24-2-8. System of accounts to be kept by public utilities; uniform account-
ing system for public service districts and municipally owned
public utilities.
§24-2-11. Requirements for certificate of public convenience and necessity.
§24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

The jurisdiction of the commission shall extend to all
public utilities in this state, and shall include any utility
engaged in any of the following public services:

Common carriage of passengers or goods, whether by air,
railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; and any other public service: Provided, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: Provided, however, That the decision making authority granted to the commission in sections four and four-a of this chapter shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and
(4) The number of customers to be served is not substantial.

The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction.

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

§24-2-3. General power of commission with respect to rates.

The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities: Provided, That the commission may exercise such rate authority over municipal utilities only under the circumstances set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

§24-2-3a. Advance notice of filing of general rate case required.

All public utilities subject to the provisions of section four or four-a of this article, intending to institute a general rate case, shall give the commission not less than thirty days' notice before proceeding under the provisions of those sections unless the commission modifies or waives such notice requirement.

§24-2-4. Procedure for changing rates prior to July one, one thousand nine hundred eighty-one.

No public utility subject to this chapter, except those utilities subject to the provisions of section four-b of this
article, shall change, suspend or annul any rate, joint rate,
charge, rental or classification except after thirty days' notice
to the commission and the public, which notice shall plainly
state the changes proposed to be made in the schedule then
in force and the time when the changed rates or charges
shall go into effect; but the commission may enter an order
suspending the proposed rate as hereinafter provided. The
proposed changes shall be shown by printing new schedules,
or shall be plainly indicated upon the schedules in force at
the time, and kept open to public inspection: Provided, That
the commission may, in its discretion, and for good cause
shown, allow changes upon less time than the notice herein
specified, or may modify the requirements of this section in
respect to publishing, posting and filing of tariffs, either by
particular instructions or by general order.

Whenever there shall be filed with the commission any
schedule stating a change in the rates or charges, or joint
rates or charges, or stating a new individual or joint rate
or charge or joint classification or any new individual or
joint regulation or practice affecting any rate or charge,
the commission shall have authority, either upon complaint
or upon its own initiative without complaint, to enter upon
a hearing concerning the propriety of such rate, charge, classi-
fication, regulation or practice; and, if the commission so
orders, it may proceed without answer or other form of
pleading by the interested parties, but upon reasonable notice,
and, pending such hearing and the decision thereon, the
commission, upon filing with such schedule and delivering to
the public utility affected thereby a statement in writing of
its reasons for such suspension, may suspend the operation
of such schedule and defer the use of such rate, charge,
classification, regulation or practice, but not for a longer
period than one hundred and twenty days beyond the time
when such rate, charge, classification, regulation or practice
would otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge, classifica-
tion, regulation or practice as would be proper in a pro-
ceeding initiated after the rate, charge, classification, regula-
tion or practice had become effective: Provided, That if any such hearing and decision thereon cannot be concluded within the period of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned for the refund to the persons or parties entitled thereto of the amount of the excess, plus interest at the rate of not less than seven percent per annum, as may be specified by the commission, if such rate so put into effect is subsequently determined to be higher than those finally fixed for such utility. In specifying the applicable interest rate, the commission shall be guided by the interest rate which such public utility would in all probability have to agree to pay if such public utility at that time borrowed in the marketplace a sum of money equivalent to the amount of money the commission estimates the increase in rates will produce between the effective date of such increase and the anticipated date the rates will be finally fixed for such public utility, it being intended that a public utility should be discouraged from imposing higher rates than it should reasonably anticipate will be finally fixed as a means in effect of borrowing money at a rate of interest less than such public utility would have to agree to pay if it borrowed money in the marketplace. No such accrued interest paid on any such refund shall be deemed part of the cost of doing business in a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.
Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state. The provisions of this section shall expire on and be of no further force and effect after the thirtieth day of June, one thousand nine hundred eighty-one, except that as to any case pending on said date in which the suspension period has expired and rates are in effect under bond such case shall be proceeded with in accordance with this section; as to any other case pending on said date, the commission shall treat the case as filed anew on the first day of July, one thousand nine hundred eighty-one, except that it shall not be necessary for any new process or notice to be served or published.

§24-2-4a. Procedure for changing rates after June thirtieth, one thousand nine hundred eighty-one.

After the thirtieth day of June, one thousand nine hundred eighty-one, no public utility subject to this chapter except those utilities subject to the provisions of section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to
Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred and seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, That in the case of a public utility having two thousand five hundred customers or less and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days, beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend
the operation of such schedule and defer the use of such rate,
charge, classification, regulation or practice, but not for a
longer period than one hundred fifty days, beyond the time
when such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public
utility having more than five thousand customers, but not
more than seven thousand five hundred customers, and which
is not principally owned by any other public utility corpora-
tion or public utility holding corporation, the commission may
suspend the operation of such schedule and defer the use of
such rate, charge, classification, regulation or practice, but not
for a longer period than one hundred eighty days, beyond the
time when such rate, charge, classification, regulation or
practice would otherwise go into effect; and after full hearing,
whether completed before or after the rate, charge, classifi-
cation, regulation or practice goes into effect, the commission
may make such order in reference to such rate, charge, classi-
fication, regulation or practice as would be proper in a pro-
ceeding initiated after the rate, charge, classification, regula-
tion or practice had become effective: Provided, however, That
if any such hearing and decision thereon is not concluded with-
in the periods of suspension, as above stated, such rate, charge,
classification, regulation or practice shall go into effect at the
end of such period not subject to refund: Provided further,
That if any such rate, charge, classification, regulation or
practice goes into effect because of the failure of the commis-
sion to reach a decision, the same shall not preclude the com-
mission from rendering a decision with respect thereto which
would disapprove, reduce or modify any such proposed rate,
charge, classification, regulation or practice, in whole or in
part, but any such disapproval, reduction or modification shall
not be deemed to require a refund to the customers of such
utility as to any rate, charge, classification, regulation or prac-
tice so disapproved, reduced or modified. The fact of any rate,
charge, classification, regulation or practice going into effect
by reason of the commission’s failure to act thereon shall not
affect the commission’s power and authority to subsequently
act with respect to any such application or change in any rate,
charge, classification, regulation or practice. Any rate, charge,
classification, regulation or practice which shall be approved,
disapproved, modified or changed, in whole or in part, by
decision of the commission shall remain in effect as so ap-
proved, disapproved, modified or changed during the period
or pendency of any subsequent hearing thereon or appeal there-
from. Orders of the commission affecting rates, charges, classi-
fications, regulations or practices which have gone into effect
automatically at the end of the suspension period are prospec-
tive in effect only.

At any hearing involving a rate sought to be increased or
involving the change of any rate, charge, classification, regu-
lation or practice, the burden of proof to show that the in-
creased rate or proposed increased rate, or the proposed
change of rate, charge, classification, regulation or practice
is just and reasonable shall be upon the public utility making
application for such change. When in any case pending before
the commission all evidence shall have been taken and the
hearing completed, the commission shall render a decision in
such case. The failure of the commission to render a decision
with respect to any such proposed change in any such rate,
charge, classification, regulation or practice within the various
time periods specified in this section after the application there-
for shall constitute neglect of duty on the part of the commis-
sion and each member thereof.

Where more than twenty members of the public are affected
by a proposed change in rates, it shall be a sufficient notice
to the public within the meaning of this section if such notice
is published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall be
the community where the majority of the resident members of
the public affected by such change reside or, in case of nonresi-
dents, have their principal place of business within this state.

The commission may order rates into effect subject to
refund, plus interest in the discretion of the commission, in
cases in which the commission determines that a temporary
or interim rate increase is necessary for the utility to avoid
financial distress, or in which the costs upon which these
rates are based are subject to modification by the commission.
or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

No utility may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of the next preceding paragraph of this section. The provisions of this paragraph shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia supreme court of appeals.

§24-2-4b. Procedures for changing rates of municipally operated public utilities; filing requirements; limited public service commission authority.

(a) Municipally operated public utilities are not subject to the rate approval provisions of section four or four-a of this chapter but are subject to the limited rate provisions of this section.

(b) All rates and charges set by municipally operated public utilities shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. Such rates and charges shall be adopted by municipal ordinance to be effective not sooner than forty-five days after adoption. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. The municipality shall set the date when any new rate or charge is to go into effect.

Any customer aggrieved by the changed rate or charge may, within thirty days of the adoption of the ordinance changing
said rate or charge, present to the commission a petition signed
by not less than twenty-five percent of the customers served
by such municipally operated public utility. The filing of said
petition with the commission shall suspend the adoption of the
rate change contained in the ordinance for a period of one
hundred twenty days, or until an order is issued as provided
herein. The commission shall forthwith appoint a hearing
examiner from its staff to review the grievances raised by the
petitioners. Said hearing examiner shall conduct a public
hearing, and shall within one hundred twenty days from the
date of filing of the petition, issue an order approving, dis-
approving or modifying in whole or in part, the rate or charge
contained in the ordinance. Such an order shall have the full
force and effect of an order issued by the commission.

(c) If a municipally operated public utility serves customers
outside its municipal corporate limits and these customers are
charged at rates different from those which customers within
its corporate limits are charged, the public service commission
shall review and approve or order changes in such rates if the
following conditions are met:

(1) The complaining customers are those who reside outside
the boundaries of the municipality which set the rates;

(2) These customers allege that the rates to which they
object are discriminatory; and

(3) The request for a review of the rate or charge to which
objection has been made is received by the public service
commission within thirty days of the effective date of the
adoption of the ordinance changing such rate or charge.

(d) Upon receipt of a request for a review of the rates under
the provisions of subsection (b) or (c) of this section, the com-
mission may exercise the power granted to it under the pro-
visions of section three of this article. The commission may
determine the method by which such rates are reviewed and
may grant and conduct a de novo hearing on the matter if the
customer or municipality requests such a hearing.
§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or services to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurements, regulations, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the public service commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of such utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.
Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: Provided, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of such utility in the manner provided by law.

The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

§24-2-8. System of accounts to be kept by public utilities; uniform accounting system for public service districts and municipally owned public utilities.

(a) The commission may establish a system of accounts to be kept by public utilities or classify public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipt and expenditure of moneys, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter. In the case of utilities subject to the provisions of the act of Congress entitled “An act to regulate commerce,” approved February four, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplemental thereto, the system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent with the systems and forms from time to time established for such utilities by the interstate commerce commission. But nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the interstate commerce commission. The commission may, after hearing had upon its own motion or upon complaint,
25 prescribe by order the accounts in which particular outlays
26 and receipts shall be entered, charged or credited.
27
28 (b) The commission shall, on or before the thirty-first day
29 of December, one thousand nine hundred seventy-nine, adopt
30 rules and regulations prescribing and establishing a uniform
31 system of accounts and accounting to be kept by all public
32 service districts and municipally owned public utilities, and,
33 in so doing, the commission shall confer with and seek the
34 assistance of the tax commissioner in order to coordinate
35 any such accounting systems and procedures with any such
36 procedures or systems adopted by the state tax department
37 governing the fiscal affairs of municipalities. Such rules
38 and regulations shall establish a date by which all utilities are
39 to conform with any such accounting procedures and systems
40 adopted by the commission. Any such rules and regulations
41 prescribing a system or procedure of accounting to be kept by
42 such public utilities may classify such utilities and establish
43 a system or procedure of accounts for each class and prescribe
44 the manner of keeping such accounts. The commission may
45 also ascertain, determine and prescribe what are proper and
46 adequate charges for depreciation of the several classes of
47 property for each utility and may prescribe such changes as
48 it may deem appropriate in charges made for depreciation
49 as it finds necessary.

§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 such
10 construction, franchise, license or permit. Upon the filing
11 of any application for such certificate, and after hearing, the
12 commission may, in its discretion, issue or refuse to issue, or
13 issue in part and refuse in part, such certificate of convenience
and necessity: *Provided*, That any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days' notice of the filing of any such application for a certificate of public convenience and necessity under this section. The commission shall render its final decision on any application filed after the thirtieth day of June, one thousand nine hundred eighty-one, under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: *Provided*, That if the projected total cost of the project is greater than fifty million dollars, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing. If such decision is not rendered within the aforementioned two hundred seventy days, four hundred days or ninety days, the commission shall issue a certificate of convenience and necessity as applied for in the application. The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.


1 In addition to all other powers and duties conferred upon the public service commission herein, the commission shall be charged with the duty of enforcing the provisions of the United States "Federal Railroad Safety Act" and the "Uniform Motor Carrier Identification Act" in this state under the federal requirements contained therein requiring state enforcement of such acts, insofar as the same are not repugnant to the laws of this state or contrary to the rules and regulations of the commission.

Regulatory Policy Act of 1978," insofar as the same are not repugnant to the laws of this state or contrary to the rules and regulations of the commission, unless the governor, exercising authority reserved to him in said acts, designates another agency to perform such duties, in whole or in part. The term "state regulatory authority" as used in this paragraph shall have the same meaning as such term is defined by said federal acts.

In addition, the commission shall carry out other federal acts, including appropriate portions of the "Natural Gas Policy Act of 1978," for which the governor designates it as the responsible agency in this state.

§24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.

The commission shall not enforce, originate, continue, establish, change or otherwise authorize or permit an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule through any automatic adjustment clause or fuel adjustment clause.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-6. Special license fee; "public service commission fund."
§24-3-7. Permit to abandon service; certificate.

§24-3-6. Special license fee; "public service commission fund."

(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and such fee shall not exceed ten cents on each one hundred dollars of value and shall be levied by it upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, which fees shall be paid on or before the twentieth day of January in each year. Such sum, together with that provided in subsection (b) hereof, shall be paid into the state treasury and kept as a special fund designated “public service commission fund,” to be appropriat-
ed as provided by law for the purpose of paying the salaries of
the commission, as fixed by this chapter, its expenses and
salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this
chapter shall pay a special license fee in addition to any and all
fees now required by law. The amount of such fees shall be
fixed by the public service commission and such fee shall not
exceed forty cents on each one hundred dollars of total gross
revenue and shall be levied by it upon each of such public
utilities, in the proportion which the total gross revenue de-
derived from intrastate business done by each of such public
utilities in the calendar year next preceding bears to the total
gross revenue derived from intrastate business done in such
year by all public utilities subject to regulation by the public
service commission, in addition to such fees as may be fixed
by the public service commission under the provisions of sub-
section (a) hereof and which fees shall be paid on or before
the first day of July in each year. Such sum shall be paid into
the state treasury and be kept, appropriated and used as pro-
vided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any
fiscal year shall not revert to the treasury but shall remain in
said fund and may be appropriated and used as provided in
subsection (a) hereof in the ensuing fiscal years.

§24-3-7. Permit to abandon service; certificate.

No railroad or other public utility shall abandon all or any
portion of its service to the public or the operation of any of
its lines which would affect the service it is rendering the
public unless and until there shall first have been filed with
the public service commission of this state an application for
a permit to abandon service and obtained from the commis-
ion an order stating that the present and future public con-
venience and necessity permits such abandonment.

ARTICLE 5. REVIEW OF COMMISSION'S ACTION.

§24-5-1. Review of final orders of commission.

Any party feeling aggrieved by the entry of a final order by
the commission, affecting him or it, may present a petition in
writing to the supreme court of appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The applicant shall deliver a copy of such petition to the secretary of the commission on or before the date the same is presented to the court or the judge, and it shall be the duty of the secretary promptly to file with the clerk of said court all papers, documents, evidence and other records constituting the complete record in the case, or certified copies thereof, as were before the commission at the time of the entry of the order from which the appeal is taken. The court or judge shall fix a time for the hearing on the application, but such hearing, unless by agreement of the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. The commission shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

Article
6. Duties and Privileges of Motor Carriers Subject to Regulation of the Commission.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2a. Regulation of business of towing, hauling or carrying wrecked or disabled vehicles.

§24A-2-2a. Regulation of business of towing, hauling or carrying wrecked or disabled vehicles.

(a) On and after July one, one thousand nine hundred
eighty-two, common carriers by motor vehicles engaged in the
business of towing, hauling or carrying wrecked or disabled
vehicles shall, notwithstanding any other provision of the
laws of the state of West Virginia to the contrary, be regulated
by the provisions of this section and this section shall not be
applicable to said carriers until such date.

(b) No common carrier by motor vehicle engaged in the
business of towing, hauling or carrying wrecked or disabled
vehicles and mobile homes shall be required to obtain a com-
mon carrier certificate or other certificate of authority from
the commission prior to engaging in such business, however,
such carrier shall not engage in such business unless and until
such carrier shall have registered as a carrier with the com-
mission in accordance with the provisions of this section.

(c) A person may not act as a common carrier by motor
vehicle by engaging in the business of towing, hauling or
carrying wrecked or disabled motor vehicles for hire unless
that person has registered as a carrier with the public service
commission as provided in this section; nor, may a person
continue to act as a carrier by engaging in the business of
towing, hauling or carrying wrecked or disabled motor vehicles
for hire if his registration is revoked or suspended by the com-
mission. A person registered as a carrier under the provisions
of this section may not charge, demand, collect or receive a
greater remuneration for the towing, hauling or carrying of any
wrecked or disabled motor vehicle than the rates, fares and
charges established by the provisions of this section.

The commission shall register all carriers as may make
application for registration as a common carrier by motor
vehicle for the purpose of engaging in the business of towing,
hauling or carrying wrecked or disabled motor vehicles for hire
upon satisfactory evidence to the commission that the carrier
has complied with all applicable requirements of this chapter
and all applicable rules and regulations of the commission.
The commission shall by general order, applicable to all car-
riers registered under this section, fix, alter and determine
just, fair, reasonable and sufficient maximum statewide or
regional schedules of rates, fares and charges, and it shall
establish reasonable classifications of carriers for which the
schedules are applicable, but before the rates, fares and charges
are fixed, altered or determined, the commission shall hold
hearings in order to give all interested parties an opportunity
to be heard, and it shall give reasonable notice of the hearings
in the manner as the commission shall by rule prescribe.
Carriers registered under the provisions of this section are
subject to the regulatory powers of the commission as provided
in section three of this article.

Upon the complaint of any aggrieved party, the commission
may suspend or revoke the registration of any person registered
with the commission under the provisions of this section for
the violation of any rule or regulation established by the
commission and applicable to that person or for the violation
of any provision of this article applicable to persons registered
under the provisions of this section: Provided, That for the
first violation, suspension of registration shall be for a period
of not more than thirty days; and, for a second violation the
commission may revoke the registration for a period of one
year; and, for a third violation the commission may revoke the
registration permanently. But before any suspension or revo-
cation is effected, the person registered under this section shall
first be given reasonable notice of the charges against him
and shall be granted an opportunity to be heard by the com-
mission or its designee in accordance with the rules and regula-
tions for hearings as may be by rule established by the
commission.


It shall be unlawful for any common carrier by motor
vehicle to operate within this state without first having ob-
tained from the commission a certificate of convenience
and necessity. Upon the filing of an application for such
certificate, the commission shall set a time and place for a
hearing on the application: Provided, That the commission
may, after giving proper notice and if no protest is received,
waive formal hearing on the application. Notice shall be
by publication which shall state that a formal hearing may
be waived in the absence of a protest to such application.
The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least ten days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT TO REGULATION OF THE COMMISSION.

§24A-6-6. Special annual assessment against motor carriers for expenses of administering chapter; “public service commission motor carrier fund.”

In addition to the license fees, registration fees, or any other taxes required by law to be collected from motor carriers subject to this chapter, each such motor carrier shall be subject to, and shall pay to the public service
commission, a special annual assessment for the purpose of paying the salaries, compensation, costs and expenses of administering and enforcing this chapter. All proceeds or funds derived from such assessment shall be paid into the state treasury and credited to a special fund designated public service commission motor carrier fund, to be appropriated as provided by law for the purposes herein stated. Each member of the commission shall receive a salary in the amount set forth in section three, article one, chapter twenty-four of this code as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided by law, to be paid in monthly installments from said fund. The special assessment against each motor carrier shall be apportioned upon the number and capacity of motor vehicles used by said carrier, computed as hereinafter provided.

(a) For each uniform identification card $3.00

(b) Upon each power unit of such carriers of property, in accordance with its capacity as rated by its manufacturer, in addition to amount of subdivision (a):

<table>
<thead>
<tr>
<th>Capacity Range</th>
<th>Assessment Amount</th>
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<tbody>
<tr>
<td>of one ton or less capacity</td>
<td>$9.00</td>
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<tr>
<td>of over one to one and one-half tons capacity</td>
<td>13.50</td>
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<tr>
<td>of over one and one-half tons to two tons capacity</td>
<td>18.00</td>
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<tr>
<td>of over two tons to three tons capacity</td>
<td>22.50</td>
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<tr>
<td>of over three tons to four tons capacity</td>
<td>27.00</td>
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<td>of over four tons to five tons capacity</td>
<td>31.50</td>
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<td>of over five tons to six tons capacity</td>
<td>36.00</td>
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<td>of over six tons to seven tons capacity</td>
<td>40.50</td>
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<td>of over seven tons to eight tons capacity</td>
<td>45.00</td>
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<td>of over eight tons to nine tons capacity</td>
<td>49.50</td>
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<tr>
<td>of over nine tons to ten tons capacity</td>
<td>54.00</td>
</tr>
<tr>
<td>of over ten tons capacity, $54.00 plus $4.50 for each additional ton of capacity in excess of ten tons.</td>
<td></td>
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</tbody>
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(c) Upon each trailer and semitrailer of such carriers of property, in accordance with its capacity as rated by its
manufacturer, in an amount of two thirds of the amount provided for vehicles of its capacity in subdivision (b) of this section.

(d) Upon each power unit of such carriers of passengers, in accordance with the seating capacity thereof, in addition to amount in subdivision (a):

- of ten passengers or less: $13.50
- of eleven to twenty passengers, inclusive: $22.50
- of twenty-one to thirty passengers, inclusive: $31.50
- of thirty-one to forty passengers, inclusive: $45.00
- of over forty passengers: $54.00

(e) The annual assessment of each motor carrier shall be paid on or before the first day of July of each year. Additional assessments shall be collected upon the placing in use of any additional motor vehicle: Provided, That such additional assessments shall be subject to a reduction in the amounts shown in subdivisions (b), (c) and (d) corresponding to the unexpired quarterly periods of the fiscal year, but shall not in any event be less than one fourth of such amount plus the sum of three dollars provided in subdivision (a).

(f) Upon payment by any motor carrier of the assessment provided for, the public service commission shall advise the department of motor vehicles by notice in writing that such assessment has been paid, whereupon the department of motor vehicles may issue motor vehicle licenses for the vehicles described in said notice.

(g) Prior to the beginning of any fiscal year the public service commission, after taking into consideration any unexpended balance in the motor carrier fund, the probable receipts to be received in the ensuing fiscal year, and the probable costs of administering and enforcing this chapter for the ensuing fiscal year, may fix the assessments provided for in this section for the ensuing fiscal year in amounts which, in the commission's judgment, will produce sufficient revenue to administer and enforce this chapter for said fiscal year: Provided, That in no event shall such assessments exceed the amounts set up in this section.
CHAPTER 24B. GAS PIPELINE SAFETY.

Article
4. Hearings; Burden of Proof; Enforcement.
5. Employees of Commission; Funding.

ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.

§24B-4-6. Penalties.

(a) Any person who violates any provision of this chapter or any valid regulation or order issued thereunder, shall be subject to a civil penalty to be imposed by the commission of not to exceed one thousand dollars for each violation for each day that the violation persists: Provided, That the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.

(b) Any civil penalty may be compromised by the commission. In determining the amount of penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) Civil penalties collected under this section shall be paid into the state treasury.

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-1. Employees.
§24B-5-2. Compensation to commissioners.
§24B-5-3. Funding; property and revenue license fees.
may designate such employees as it deems necessary to take
evidence at any hearing held or required by the provisions
of this chapter, which employees are hereby empowered to
administer oaths in all parts of this state so far as the exercise
of such power is properly incidental to the performance of
their duties in connection with the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

Each member of the commission shall receive a salary in
the amount set forth in section three, article one, chapter
twenty-four of this code as compensation for the administra-
tion of this chapter in addition to all other salary or compen-
sation otherwise provided for by law, to be paid in monthly
installments from the public service commission gas pipeline
safety fund.

§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company shall pay a special license fee
in addition to those now required by law. The amount of
such fees shall be fixed by the public service commission
and levied by it upon each of such pipeline companies accord-
ing to the number of three inch equivalent pipeline miles
included in its pipeline facilities, and shall be apportioned
among such pipeline companies upon the basis of the pipe-
line companies’ reports submitted to the commission in such
form as the commission may prescribe, so as to produce a
revenue of not more than one hundred fifty thousand dollars
per annum, which fees shall be paid on or before the first day
of July in each year.

(b) Such sums collected under subsection (a) of this section
shall be paid into the state treasury and kept as a special fund,
designated “public service commission gas pipeline safety
fund,” to be appropriated as provided by law for the purpose
of paying the salaries of the commission, as fixed by this
chapter, its expenses and salaries, compensation, costs and
expenses of its employees. Any balance in said fund at the
end of any fiscal year shall not revert to the treasury, but
shall remain in said fund and may be appropriated as pro-
vided in this subsection.
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 six, relating to legislative findings that a statewide emergency telephone system is important to all citizens; defining certain terms; requiring the public service commission to adopt an emergency telephone system plan; establishment of emergency systems by state and local agencies; access to certain police, fire, emergency services, uniform statewide emergency number, and changeover of telephones by certain utilities required; requiring that systems be accessible to deaf persons; requiring certain utilities and public agencies to pay certain costs; and requiring all coin-operated telephones to permit emergency calls without charge by the first day of January, one thousand nine hundred eighty-seven.

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 six, to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-1. Legislative findings.

§24-6-2. Definitions.

§24-6-3. Adoption of emergency telephone system plan.

§24-6-4. Creation of emergency telephone systems.

§24-6-1. Legislative findings.

1 The Legislature hereby finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There are hundreds of different emergency phone numbers throughout the state. Present telephone exchange boundaries and central office service areas do not necessarily corres-
7 pond to public safety and political boundaries. Provi-
8 sion of a single, primary emergency number through
9 which emergency services can be quickly and efficiently
10 obtained will provide a significant contribution to law
11 enforcement and other public service efforts. This simpli-
12 fied means of procuring emergency services will result
13 in the saving of life, a reduction in the destruction of
14 property, quicker apprehension of criminals, and ulti-
15 mately the saving of money. The Legislature further finds
16 and declares that the establishment of a uniform, state-
17 wide emergency number is a matter of statewide concern
18 and interest to all inhabitants and citizens of this state.
19 It is the purpose of this article to establish a primary
20 emergency telephone number for use in this state and
21 to encourage units of local government and combinations
22 of units of local government to develop and improve
23 emergency communication procedures and facilities in
24 a manner that will allow a quick response to any person
25 calling the primary emergency telephone number seek-
26 ing police, fire, medical, rescue and other emergency
27 services.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:
3 (1) "Public agency" means the state, and any munici-
4 pality, county, public district or public authority which
5 provides or has authority to provide fire-fighting, police,
6 ambulance, medical, rescue or other emergency services.
7 (2) "Emergency services organization" means the
8 organization established under article five, chapter fifteen
9 of this code.
10 (3) "Public safety unit" means a functional division
11 of a public agency which provides fire-fighting, police,
12 medical, rescue or other emergency services.
13 (4) "Emergency telephone system" means a telephone
14 system which through normal telephone service facilities
15 automatically connects a person dialing the primary
16 emergency telephone number to an established public
17 agency answering point.
§24-6-3. Adoption of emergency telephone system plan.

(a) The public service commission shall, by the first day of January, one thousand nine hundred eighty, develop and adopt a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems.

(b) In developing the comprehensive plan, the public service commission shall consult with those public utilities engaged in the provision of telephone service, and with the various public agencies and public safety units, including, but not limited to, emergency services organizations.

(c) The public service commission shall annually review with each operating telephone utility their construction and switching replacements projections. During this review, the public service commission shall ensure that all new switching facilities will accommodate the emergency telephone system.

§24-6-4. Creation of emergency telephone systems.

(a) Upon the adoption by the public service commission of the comprehensive plan, a public agency may establish, consistent with the comprehensive plan, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multijurisdiction or regional systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency. To the extent feasible, these systems shall be centralized.

(b) Every system shall provide access to emergency services organizations, police, fire-fighting, and emergency medical and ambulance services, and may provide access to other emergency services. The system may also provide access to private ambulance services. The system shall provide the necessary mechanical equipment at the
established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the state provides emergency services, the system shall provide access to the public safety unit.

(c) The primary emergency telephone number to the extent possible, shall be uniform throughout the state.

(d) The utility in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the utility, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities. Other costs pursuant to the emergency telephone system shall be allocated as determined by the public service commission.

(e) All coin-operated telephones within the state shall, by the first day of January, one thousand nine hundred eighty-seven, be of a design that will permit a caller to initiate, without first having to insert a coin (dial tone first or post pay systems), local calls to the long distance and directory assistance operators, calls to the emergency telephone number answering point, if one has been established in his local calling area, and to other numbers for services as the utility may from time to time make available to the public.

CHAPTER 100
(Com. Sub. for S. B. 72—By Mr. Steptoe)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter forty-seven 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, relating to removing from certain parties the right to the defense of usury in any civil action; exempting certain debts that are incurred primarily for a business purpose from the application of the usury laws: and defining “business.”

Be it enacted by the Legislature of West Virginia:

That section ten, article six, chapter forty-seven 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, all to read as follows:

ARTICLE 6. MONEY AND INTEREST.

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

No corporation, partnership, or limited partnership may interpose the defense of usury in any civil action, nor may any bond, note, debt, or contract of a corporation, partnership, or limited partnership be set aside, impaired, or adjudged invalid by reason of anything contained in the laws prohibiting usury.

§47-6-11. Certain business debts exempt from usury laws.

No law limiting interest rates or providing for forfeiture, penalty, or other loss or liability because of the rate of interest charged may be applied:

(1) To any debt that is incurred by a loan, installment sale, or other similar transaction, and is incurred primarily for a business purpose; or

(2) To any addition to or refinancing in whole or in part of a debt meeting the requirements of subdivision (1) of this section, providing such addition or refinancing is also primarily for a business purpose: Provided, That if the debt described in subdivision (1) of this section is incurred by a natural person, the provisions of this sec-
tion shall not apply unless such debt is in a principal amount of twenty thousand dollars or more.

For the purpose of determining the applicability of this section, the term "business" means and includes any activity that is engaged in primarily for the purpose of generating "gross income," as that term is defined in section one, article thirteen, chapter eleven of this code:

Provided, That "business" does not mean or include farming or any other agricultural activity engaged in by a producer of agricultural commodities, livestock, or other farm products.

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CHAPTER 101
(Com. Sub. for H. B. 1394—By Mrs. Lane)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain acts prohibited by manufacturers and distributors and acceptance of successor dealers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS.

§47-17-5. Certain acts prohibited.

1 Notwithstanding the terms, provisions or conditions of any franchise, no manufacturer or distributor shall:

2 (a) Terminate, cancel or fail to renew a franchise without just cause, except with the prior consent of the dealer. Notwithstanding the provisions of any franchise setting forth prima facie grounds or just cause for terminating, cancelling or fail-
(b) Refuse without just cause to accept as successor dealer the widow, son or other member of the family of a deceased dealer, who succeeds to the deceased person's place in the dealership business. However, no member of the family may succeed to a franchise unless the manufacturer has been given written notice of the identity, financial ability and qualifications of such member of the family and in no event shall the successor be refused acceptance until after two months' notice in writing is first given by the manufacturer or distributor to the successor dealer.

(c) Refuse without just cause to accept as a successor dealer a purchaser to whom the dealer has agreed to sell the dealership business. However, no successor dealer may succeed to a franchise unless the manufacturer or distributor has been given written notice of the identity, financial ability and qualifications of such successor dealer. In the event the manufacturer or distributor refuses to accept as a successor dealer a purchaser to whom the dealer has agreed to sell the dealership business, the manufacturer or distributor is required to inform the purchaser in writing within two months of the date of the written notice of the identity, financial ability and qualifications of such purchaser, valid reasons for nonacceptance.

(d) Sell, lease or rent goods, motor vehicles, or render any service normally performed and required of dealers under the franchise agreement with the manufacturer in unfair competition with such dealer, except that this subdivision does not apply to a sale, lease or rental to, or service performed for, an agency of federal, state or local government.

(e) Require any dealer to participate in or contribute to any local or national advertising fund, or participate in any contests, "giveaways" or other sales devices, without the dealer's consent.

(f) Withhold or delay delivery of motor vehicles out of the ordinary course of business.
46. (g) Discriminate against any dealer in the allocation of, or through withholding from delivery of, certain models of motor vehicles ordered by the dealer out of the ordinary course of business.

50. (h) Amend unilaterally a dealer’s allotment of motor vehicles or quota in sales contests without reasonable cause.

52. (i) Coerce, attempt to coerce a dealer, or act other than honestly in accordance with reasonable standards for fair dealing, with respect to the dealer’s right to sell, assign, transfer or otherwise dispose of his business, in all or in part:

Provided, That the dealer shall have no right to sell, assign or transfer the franchise without the manufacturer’s consent.

58. (j) Coerce or attempt to coerce any dealer by any of the following methods: (1) Threaten to refuse or fail to renew or extend a lease of premises controlled by a manufacturer, (2) threaten to award an additional franchise or agreement to another person for the sale of the same product as a dealer in that dealer’s area of influence or responsibility, (3) threaten to withhold or delay the delivery of motor vehicles, parts or other saleable goods, (4) threaten to terminate, cancel or fail to renew a dealer’s franchise or agreement, or (5) any other method of coercion as follows: (i) Expand a dealer’s facilities, increase a dealer’s sales personnel, purchase more parts or accept programs for sales and the operation of a dealer’s business, (ii) accept delivery of any motor vehicle, parts, accessories or other similar commodities not ordered by a dealer, (iii) consent to participate and participate in or contribute to any local or national advertising fund, or participate in any contests, “giveaways” or other sales devices, (iv) compel a dealer to yield to demands of a manufacturer or distributor for increased sales, expansion of facilities or improvement of operations inconsistent with good business practices.

78. (k) Require any dealer to sell or use exclusively any products, other than motor vehicles, that such manufacturer or distributor offers for sale.

Nothing in this section shall prohibit or prevent a manufacturer or distributor from performing, or requiring the performance by a dealer of any of the provisions of the franchise
where such performance or requirement is fair, reasonable and equitable under all the surrounding circumstances, and consistent with good business practices on the part of both dealer and manufacturer or distributor.

CHAPTER 102

(Com. Sub. for S. B. 125—By Mr. Steptoe)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-c, article five, chapter twenty-one-a; to amend and reenact section thirty-eight, article six, chapter thirty-one; to amend and reenact section four hundred fourteen, article four, chapter thirty-two; to amend and reenact section thirteen, article four, chapter thirty-three; to amend and reenact section nine, article one-a, chapter thirty-eight; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a; to amend and reenact section thirty-one, article three, chapter fifty-six; and to amend and reenact section thirty-three, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to service of process on certain nonresidents; changing certain references to "auditor" to "secretary of state"; and providing that where service of notices or process is made on nonresidents, such service may be made by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section seventeen-c, article five, chapter twenty-one-a; section thirty-eight, article six, chapter thirty-one; section four hundred fourteen, article four, chapter thirty-two; section thirteen, article four, chapter thirty-three; section nine, article one-a, chapter thirty-eight; section one hundred thirty-seven, article two, chapter forty-six-a; section thirty-one, article three, chapter fifty-six; and section thirty-three, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted to read as follows:

Chapter
21A. Unemployment Compensation.
33. Insurance.
38. Liens.
46A. West Virginia Consumer Credit and Protection Act.
56. Pleading and Practice.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia, was a resident but has left the state of West Virginia, or is a corporation not authorized to do business in this state and for which employer services are performed in insured work within the state of West Virginia and liability for payment of unemployment compensation contributions is due and payable to this state under the provisions of the West Virginia unemployment compensation law, such employer shall be deemed to appoint the secretary of state of West Virginia, or his successor in office, to be the employer's true and lawful attorney upon whom may be served all lawful process in any action or any proceeding for all purposes under this chapter and when served as hereinafter provided such service shall have the same force, effect and validity as if said nonresident employer were personally served with summons and complaint in this state.

18 Service shall be made by leaving the original and two copies of both the summons and complaint, and a fee of two dollars, with the secretary of state, or in his office, and said service shall be sufficient upon said nonresident. In the event any such summons and complaint is so served on the secretary of state he shall immediately cause one of the copies of the summons and complaint to be sent by registered or certified mail, return receipt
26 requested, to the employer at the latter's last known or
27 reasonably ascertainable address. The employer's return
28 receipt or, if such registered or certified mail is returned
29 to the secretary of state refused by the addressee or for
30 any other reason is undelivered, such mail showing there-
31 on the stamp of the post-office department that delivery
32 has been refused, or other reason for nondelivery, shall
33 be appended to the original summons and complaint, and
34 filed by the secretary of state in the clerk's office of the
35 court from which said process issued.

CHAPTER 31. CORPORATIONS.
ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.
§31-6-38. License tax on domestic and foreign associations.
1 All domestic and foreign building and loan associations
2 shall pay annually to the secretary of state a state license
3 tax for the privilege of doing business in this state in an
4 amount based upon the amount of money loaned by such
5 associations in this state instead of upon the proportion
6 of capital stock represented by the property owned and
7 used in this state, and in computing such tax the same
8 rate shall be used for foreign associations as is used for
9 domestic associations: Provided, That the amount of
10 money loaned by such associations shall be taken to be
11 the amount shown upon the face of the document evi-
12 dencing the loan without deduction of credits therefrom.

CHAPTER 32. UNIFORM SECURITIES ACT.
ARTICLE 4. GENERAL PROVISIONS.
§32-4-414. Scope of the chapter and service of process.
1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell
3 is made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who
6 buy or offer to buy when (1) an offer to buy is made in
7 this state, or (2) an offer to sell is made and accepted in
8 this state.
(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as section 405 so far as investment advisors are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in
any noncriminal suit, action or proceeding against him or
his successor, executor or administrator which arises un-
der this chapter or any rule or order hereunder after the
consent has been filed, with the same force and validity
as if served personally on the person filing the consent. A
person who has filed such a consent in connection with a
previous registration need not file another. Service may
be made by leaving a copy of the process in the office of
the commissioner, but it is not effective unless (1) the
plaintiff, who may be the commissioner in a suit, action or
proceeding instituted by him, forthwith sends notice of the
service and a copy of the process by registered or certified
mail to the defendant or respondent at his last address on
file with the commissioner, and (2) the plaintiff’s affidavit
of compliance with this subsection is filed in the case on
or before the return day of the process, if any, or within
such further time as the court allows.

(h) When any person, including any nonresident of
this state, engages in conduct prohibited or made action-
able by this chapter or any rule or order hereunder, and
he has not filed a consent to service of process under sub-
section (g) and personal jurisdiction over him cannot
otherwise be obtained in this state, that conduct shall be
considered equivalent to his appointment of the com-
missioner or his successor in office to be his attorney to
receive service of any lawful process in any noncriminal
suit, action or proceeding against him or his successor,
executor or administrator which grows out of that con-
duct and which is brought under this chapter or any rule
or order hereunder, with the same force and validity
as if served on him personally. Service may be made by
leaving a copy of the process in the office of the commis-
ioner, and it is not effective unless (1) the plaintiff, who
may be the commissioner in a suit, action or proceeding
instituted by him, forthwith sends notice of the service
and a copy of the process by registered or certified mail
to the defendant or respondent at his last known address
or takes other steps which are reasonably calculated to
give actual notice, and (2) the plaintiff’s affidavit of com-
pliance with this subsection is filed in the case on or be-
fore the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the insurance commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Con-
gress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the secretary of state and his successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit, or proceeding which may be instituted by the insurance commissioner in the name of any such insured or beneficiary or in the name of the state of West Virginia, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer in any such action or proceeding in any court of competent jurisdiction of this state, may be made by serving the secretary of state or his chief clerk with two copies thereof and the payment to him of a fee of two dollars. The secretary of state shall forward a copy of such process by registered or certified mail to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff to the
defendant at its last known principal place of business by registered or certified mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court, in case there be no clerk, an affidavit of compliance herewith, a copy of the process, and either a return receipt purporting to be signed by the defendant or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or its agent, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process so made shall be deemed to have been made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection (b) be valid if served upon any person within this state who, in this state on behalf of such insurer, is

A. Soliciting insurance, or
B. Making, issuing or delivering any contract of insurance, or
C. Collecting or receiving any premium, membership fee, assessment or other consideration for insurance; provided notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff to the defendant at the last known principal place of business of the defendant, by registered or certified mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court in case there be no clerk, an affidavit of compliance herewith, a copy of the process, and either a return receipt purporting to be signed by the defendant or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the de-
fendant or its agent the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of this subsection (b) shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff. Service of process shall be complete ten days after such process and the accompanying papers are filed in accordance with this section.

(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(c) (1) Before any unlicensed foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unlicensed insurer shall either (1) deposit with the clerk of the court in which such action, suit or proceeding is pending, cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action: Provided, That the court may in its discretion make an order dispensing with such deposit or bond where the auditor of the state shall have certified to such court that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (2) procure a license to transact insurance in this state.

(2) The court in any action, suit or proceeding, in which service is made in the manner provided in subdivision (2) or (3) of subsection (b) of this section may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (c) and to defend such action.
(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in subdivision (2) or (3) of subsection (b) of this section on the grounds either (1) that such unlicensed insurer has not done any of the acts enumerated in subdivision (1) of subsection (b) of this section, or (2) that the person on whom service was made pursuant to subdivision (3) of subsection (b) of this section was not doing any of the acts therein enumerated.

(d) In any action against an unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

(e) The provisions of this section shall not apply to any suit, action or proceeding against any unlicensed foreign or alien insurer arising out of any contract of excess line insurance effected in accordance with article twelve of this chapter where any such contract contains a provision designating the auditor or secretary of state its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract of insurance.
CHAPTER 38. LIENS.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

§38-1A-9. Action by secretary of state following service.

1 Forthwith upon such service, said secretary of state
2 shall send to such trustee the second copy of such process
3 or notice, by registered or certified mail, return receipt
4 requested, to the address stated in such notation. The
5 third copy of such process or notice, bearing the acknowledg-
6 edgment of the secretary of state of the fact of service
7 on him, with his notation of the mailing of the second
8 copy as above provided, shall be transmitted by the
9 secretary of state to the clerk of the court issuing the
10 process or to the person giving the notice, as the case may
11 be.

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident cor-
2 poration authorized to do business in this state pursuant
3 to the provisions of chapter thirty-one of this code, who
4 takes or holds any negotiable instrument, nonnegotiable
5 instrument, or contract or other writing, arising from a
6 consumer credit sale or consumer lease which is subject
7 to the provisions of this article, other than a sale or lease
8 primarily for an agricultural purpose, or who is a lender
9 subject to the provisions of section one hundred three of
10 this article, shall be conclusively presumed to have ap-
11 pointed the secretary of state as his attorney-in-fact with
12 authority to accept service of notice and process in any
13 action or proceeding brought against him arising out of
14 such consumer credit sale, consumer lease or consumer
15 loan. A person shall be considered a nonresident hereunder
16 if he is a nonresident at the time such service of notice and
17 process is sought. No act of such person appointing the
18 secretary of state shall be necessary. Immediately after
19 being served with or accepting any such process or notice,
of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of two dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such person at his address, which address shall be stated in such process or notice: Provided, That such return receipt shall be signed by such person or an agent or employee of such person if a corporation, or the registered or certified mail so sent by said secretary of state is refused by the addressee and the registered or certified mail is returned to said secretary of state, or to his office, showing thereon the stamp of the U.S. postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. But no process or notice shall be served on the secretary of state or accepted fewer than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.

The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents or their administrators, etc.

§56-3-33. Actions by or certain nonresident persons having certain contacts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.
§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents or their administrators, etc.

The operation by a nonresident, or by his duly authorized agent, of a motor vehicle upon a public street, road or highway of this state, shall be deemed equivalent to an appointment by such nonresident of the secretary of state, or his successor in office, to be his true and lawful attorney, or the true and lawful attorney of his administrator, administratrix, executor or executrix in the event said nonresident is a natural person and dies, upon whom may be served all lawful process in any action or proceeding against him or if a natural person against his administrator, administratrix, executor or executrix, in any court of record in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, growing out of any accident or collision in which such nonresident may be involved while so operating or so permitting to be operated a motor vehicle on any such street, road or highway, and such operation shall be a signification of his agreement that any such process against him, or if a natural person against his administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or if a natural person his administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any such action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of said nonresident who dies during or subsequent to said operation of a motor vehicle by such nonresident or his duly authorized agent.

(a) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff
to prevail in the action that he will reimburse the defendant, or cause him to be reimbursed, the necessary expense incurred by him in and about the defense of the action in this state, and upon the issue of a summons the clerk will certify thereon that said bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and complaint with the certificate aforesaid of the clerk thereon, and a fee of two dollars with said secretary of state, or in his office, and said service shall be sufficient upon said nonresident or if a natural person his administrator, administratrix, executor or executrix: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by said secretary of state to the defendant, and the defendant's return receipt signed by himself or his duly authorized agent or the registered or certified mail so sent by said secretary of state is refused by the addressee and the registered or certified mail is returned to said secretary of state, or to his office, showing thereon the stamp of the post-office department that delivery has been refused, is appended to the original summons and complaint, and filed therewith in the clerk's office of the court from which process issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

(b) The fee of two dollars, remitted to the said secretary of state at the time of service, shall be taxed in the costs of the proceeding and said secretary of state shall pay into the state treasury all funds so coming into his hands from such service. The secretary of state shall keep a record in his office of all such process and the day and hour of service thereof.

(c) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who operates a motor vehicle in
this state for a nonresident as defined in this section and
chapter, in pursuit of business, pleasure, or otherwise, or
who comes into this state and operates a motor vehicle
therein for, or with the knowledge or acquiescence of,
such nonresident; and shall include among others a mem-
ber of the family of such nonresident or a person who,
at the residence, place of business or post office of such
nonresident, usually receives and receipts for mail ad-
dressed to such nonresident.

(2) "Motor vehicle" means and includes any self-
propelled vehicle, including motorcycle, tractor, and
trailer, not operated exclusively upon stationary tracks.

(3) "Nonresident" means any person who is not a resi-
dent of this state or resident who has moved from the
state subsequent to said accident or collision, and among
others includes a nonresident firm, partnership, corpora-
tion or voluntary association, or a firm, partnership, cor-
poration or voluntary association that has moved from
the state subsequent to said accident or collision.

(4) "Nonresident plaintiff or plaintiffs" means a non-
resident who institutes an action in a court in this state
having jurisdiction against a nonresident in pursuance of
the provisions of this article.

(5) "Street," "road" or "highway" means the entire
width between property lines of every way or place of
whatever nature when any part thereof is open to the
use of the public, as a matter of right, for purposes of
vehicular traffic.

(d) The provision for service of process herein is
cumulative and nothing herein contained shall be con-
strued as a bar to the plaintiff in any action from having
process in such action served in any other mode and
manner provided by law.

§56-3-33. Actions by or against nonresident persons having
certain contacts with this state; authorizing secre-
tary of state to receive process; bond and fees; ser-
vice of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his duly
authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection, shall be deemed equivalent to an appointment by such non-resident of the secretary of state, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such non-resident's agreement that any such process against him, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;
(2) Contracting to supply services or things in this state;
(3) Causing tortious injury by an act or omission in this state;
(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume or be affected by the goods in this state: Provided, That he also regularly does or solicits business, or engages in any other persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered in this state;
(6) Having an interest in, using or possessing real property in this state; or
(7) Contracting to insure any person, property or risk located within this state at the time of contracting.
(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), subsection (a) of this section, may be asserted against him.

(c) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action or proceeding that he will reimburse the defendant, or cause him to be reimbursed, the necessary taxable costs incurred by him in and about the defense of the action or proceeding in this state, and upon the issuance of a summons, the clerk shall certify thereon that such bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and the complaint with the certificate aforesaid of the clerk thereon, and a fee of two dollars with the secretary of state, or in his office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by the secretary of state to the defendant and the defendant’s return receipt signed by himself or his duly authorized agent or the registered or certified mail so sent by the secretary of state which is refused by the addressee and which registered or certified mail is returned to the secretary of state, or to his office, showing thereon the stamp of the post-office department that delivery has been refused, shall be appended to the original summons and complaint, and filed therewith in the clerk’s office of the court from which process issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.
(d) The fee of two dollars, remitted to the secretary of state at the time of service, shall be taxed in the costs of the action or proceeding and the secretary of state shall pay into the state treasury all funds so coming into his hands from such service. The secretary of state shall keep a record in his office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and shall include among others a member of the family of such nonresident or person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership, or corporation or a firm, partnership, or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for
service in that place in an action in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provisions hereof shall not be available to a plaintiff in a cause of action arising from or growing out of any of said acts occurring prior to the effective date of this section.

AN ACT to amend and reenact sections one, two, three and five, article one-e, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten, all relating to changing the name of the southern interstate nuclear compact to the southern states energy compact; increasing membership of said compact; southern states energy board; increasing membership of said board; alternate members; policy and purpose of compact; expanding powers of said board and compact to include the areas of energy and environment; expenses of members; eligible parties to compact; effective date; and consent of Congress.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1E. SOUTHERN STATES ENERGY COMPACT.

§29-1E-1. Definitions.
§29-1E-2. Enactment of compact.
§29-1E-3. Membership of board.
§29-1E-5. Duties of members of board.
§29-1E-10. Effective date of amendments to compact; prior compact to continue in force.

§29-1E-1. Definitions.

1 As used in this article, unless the context requires otherwise:

2 (1) "Compact" means the southern states energy compact;

3 (2) "Board" means the southern states energy board.

§29-1E-2. Enactment of compact.

1 The southern states energy compact is hereby enacted into law and entered into by the state of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

6 SOUTHERN STATES ENERGY COMPACT

7 Article I. Policy and Purpose

8 The party states recognize that the proper employment and conservation of energy, and employment of energy-related facilities, materials, and products, within the context of a responsible regard for the environment, can assist substantially in the industrialization of the south and the development of a balanced economy for the region. They also recognize the optimum benefit from and acquisition of energy resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the south and contribute to the individual and community well-being of the region's people.
Article II. The Board

(a) There is hereby created an agency of the party states to be known as the “southern states energy board” (hereinafter called the board). The board shall be composed of three members from each party state, one of whom shall be appointed or designated in each state to represent the governor, the state Senate, and the state House of Delegates, respectively. Each member shall be designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The federal government may be represented without vote if provision is made by federal law for representation.

(b) Each party state shall be entitled to one vote on the board to be determined by majority vote of each member or member’s representative from the party state present and voting on any question. No action of the board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board’s functions irrespective of the civil service, per-
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sonnel or other merit system laws of any of the party
states.

(f) The board may establish and maintain, inde-
dependently or in conjunction with any one or more of the
party states, a suitable retirement system for its full-
time employees. Employees of the board shall be eligible
for social security coverage in respect of old age and
survivors insurance provided that the board takes such
steps as may be necessary pursuant to federal law to
participate in such program of insurance as a govern-
mental agency or unit. The board may establish and
maintain or participate in such additional programs of
employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the
services of personnel from any state or the United States
or any subdivision or agency thereof, from any inter-
state agency, or from any institution, person, firm or
corporation.

(h) The board may accept for any of its purposes and
functions under this compact any and all donations, and
grants of money, equipment, supplies, materials, and
services (conditional or otherwise) from any state or
the United States or any subdivision or agency thereof,
or interstate agency, or from any institution, person, firm
or corporation, and may receive, utilize and dispose of
the same.

(i) The board may establish and maintain such facili-
ties as may be necessary for the transacting of its busi-
ness. The board may acquire, hold, and convey real
and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regula-
tions for the conduct of its business, and shall have the
power to amend and rescind these bylaws, rules and
regulations. The board shall publish its bylaws, rules
and regulations in convenient form and shall file a copy
thereof, and shall also file a copy of any amendment
thereto, with the appropriate agency or officer in each
of the party states.
(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article III. Finances

(a) The board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board’s budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article two (h) of this compact, provided that the board takes
specific action setting aside such funds prior to the in-
curring of any obligation to be met in whole or in part
in this manner. Except where the board makes use of
funds available to it under article two (h) hereof, the
board shall not incur any obligation prior to the allot-
ment of funds by the party jurisdictions adequate to
meet the same.

(d) The board shall keep accurate accounts of all
receipts and disbursements. The receipts and disburse-
ments of the board shall be subject to the audit and
accounting procedures established under its bylaws.
However, all receipts and disbursements of funds
handled by the board shall be audited yearly by a quali-
fied public accountant and the report of the audit shall
be included in and become part of the annual report of
the board.

(e) The accounts of the board shall be open at any
reasonable time for inspections.

Article IV. Advisory Committees

The board may establish such advisory and technical
committees as it may deem necessary, membership on
which to include but not be limited to private citizens,
expert and lay personnel, representatives of industry,
labor, commerce, agriculture, civic associations, medicine,
education, voluntary health agencies, and officials of
local, state and federal government, and may cooperate
with and use the services of any such committees and
the organizations which they represent in furthering any
of its activities under this compact.

Article V. Powers

The board shall have power to:

(a) Ascertain and analyze on a continuing basis the
position of the south with respect to energy, energy-
related industries and environmental concerns.

(b) Encourage the development, conservation and re-
sponsible use of energy and energy-related facilities,
installations, and products as part of a balanced economy and healthy environment.

(c) Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of:

(1) Energy, environment, and applications of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

(2) The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of energy and energy-related materials, products, installations or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstance which may justify variations to meet local conditions.
(i) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the United States department of energy or any agency successor thereto, any other officer or agency of the United States and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, to coordinate the nuclear, environmental and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Article VI. Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of article five of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration
and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation of duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

Article VII. Other Laws and Relationships

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the United States department of energy, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.
(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

Article VIII. Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico and the United States Virgin Islands shall be eligible to become party to this compact.

(b) As to any eligible party state this compact shall become effective when its legislature shall have enacted the same into law: Provided, That it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

Article IX. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or
any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.


1 The governor shall appoint one of this state's three board members of the southern states energy board which is established by article two of the compact. Such member shall serve at the pleasure of the governor. The president of the Senate and the speaker of the House of Delegates shall each appoint one member of their respective houses, to serve at their pleasure, as board members of the southern states energy board. The president, the speaker and the governor are each hereby authorized to appoint an alternate member who may serve at and for such time as the regular member shall designate and shall have the same power and authority as the regular member when so serving.

§29-IE-5. Duties of members of board.

1 (a) The members of the board appointed and serving in accordance with section two of this article shall assist in the coordination of atomic and other energy-related activities within this state.

5 (b) The board members are hereby authorized and empowered to assist in the orderly development of atomic and other energy-related knowledge within the state of West Virginia.

§29-IE-10. Effective date of amendments to compact; prior compact to continue in force.

1 The amendatory provisions to section two of this article enacted in the year one thousand nine hundred seventy-nine shall become effective at such time as nine of the
eligible party states to the southern interstate nuclear compact, which may include the Commonwealth of Puerto Rico, and the United States Virgin Islands, approve substantially the same changes in the compact as are provided for in section two of this article and the Congress of the United States consents to the compact, substantially as amended by section two of this article; until such time, this state shall continue to remain a member of the southern interstate nuclear compact as set forth in chapter three, acts of the Legislature, one thousand nine hundred sixty-four.

CHAPTER 104

(Com. Sub. for H. B. 825—By Miss Shuman and Mr. Greer)

[Passed February 2, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to providing for the periodic and systematic termination of governmental entities and programs in the state of West Virginia and the powers and jurisdiction of such governmental entities and programs; performance and fiscal audits; providing for the continuation of such governmental entities, programs and powers and jurisdiction for a period of one year following termination and the cessation of existence, unless continued and reestablished; providing for the continuation and reestablishment of governmental entities and programs scheduled for termination for a period of time not to exceed six years; establishing the joint committee on government operations; the powers and duties of said committee; subpoenas; enforcement of subpoenas; penalties; reports by the committee; relating to preservation of rights and claims of both persons and governmental entities; and relating to the right of members of the Legislature to introduce and the Legislature to consider bills creating new governmental entities or amending laws relating to existing governmental entities.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-1. Short title.
§4-10-2. Legislative findings.
§4-10-3. Definitions.
§4-10-4. Termination of governmental entities or programs.
§4-10-5. Continuance of existence of governmental entity or program after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated governmental entity or program.
§4-10-6. Continuation or reestablishment of governmental entities or programs scheduled for termination.
§4-10-7. Joint committee on government operations created; membership; compensation and expenses; meetings.
§4-10-8. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses.
§4-10-9. Performance and fiscal audits of governmental entities and programs by the committee.
§4-10-10. Reports by the committee.
§4-10-11. Bill for continuation and reestablishment of governmental entity.
§4-10-12. Preservation of rights and claims.
§4-10-13. Article not to be construed as limiting new legislation.
§4-10-14. Immediate termination of certain governmental entities.

§4-10-1. Short title.

This article shall be known as and may be cited as the "West Virginia Sunset Law."

§4-10-2. Legislative findings.

The Legislature finds that state governmental actions have produced a substantial increase in the number of governmental entities, growth of programs and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability or a system of checks and balances; that often governmental entities have been created without a demonstrable need and evidence that the benefits to the public clearly justify their
creation; that once established, governmental entities tend to acquire a "permanent" status, often without regard for the condition that originally gave rise to their establishment; that the personnel of such entities are often beyond the effective control of elected officials, and that efforts to force their modernization or even to review their performance and impact have typically proven difficult at best; that too often, governmental entities acquire a combination of autonomy and authority inconsistent with democratic principles as well as a capacity for self-perpetuation incompatible with principles of accountability; and that by establishing a system for the termination, continuation or reestablishment of such governmental entities, the position of the Legislature to evaluate the need for the continued existence of existing and future governmental entities will be enhanced.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(1) "Committee" means the joint committee on government operations, hereinafter created, to perform duties under this article.

(2) "Governmental entity" means any office, department, board, agency, commission, bureau, authority, division or council of the state of West Virginia. In addition, the term "governmental entity" wherever used in this article shall be construed to also mean the "powers and jurisdiction" vested in officers mentioned in section four of this article but not the actual officers themselves.

(3) "Program" means a program administered by a governmental entity and supported by appropriations made by the Legislature.

(4) "Person" means any individual, partnership, corporation, labor organization, association, personal representative of a decedent, trustee, trustee in bankruptcy, receiver, guardian, committee for an incompetent or conservator.

§4-10-4. Termination of governmental entities or programs.

The following governmental entities and programs shall be
terminated on the dates indicated but no governmental entity 
or program shall be terminated under this article unless a per-
formance and fiscal audit has been conducted of such entity 
or program, except as authorized under section fourteen of 
this article:

(1) On the first day of July, one thousand nine hundred 
eighty: division of archives and history; state board of insur-
ance; interstate commission on the Potomac River basin.

(2) On the first day of July, one thousand nine hundred 
eighty-two: Ohio River basin commission; Ohio River valley 
water sanitation commission; Commission on postmortem 
examination; state commission on manpower, training and 
technology; southern regional education board; commission on 
uniform state laws; judicial council of West Virginia; geolo-
logical and economic survey commission; interagency council 
on child development service; motor vehicle license certificate 
appeal board; child welfare licensing board.

(3) On the first day of July, one thousand nine hundred 
eighty-four: bureau of labor and department of weights and 
measures in the department of labor; the following divisions 
of the programs of the department of agriculture: Soil conser-
vation committee, rural resource division, meat inspection; 
and the following divisions of programs of the department of 
natural resources: Water resources, U. S. geological survey, 
rabies control, work incentive program; West Virginia alcoholic 
average control licensing advisory board; driver's licensing 
avisory board; oil and gas inspectors' examining board.

§4-10-5. Continuance of existence of governmental entity or pro-
gram after termination and purpose therefor; continu-
ance of powers and authority after termination; cessa-
tion of all activities; reestablishment of terminated gov-
ernment entity or program.

Upon termination, each governmental entity or program 
shall continue in existence until the first day of July of the 
next succeeding year for the purpose of winding up its affairs. 
During such year, termination shall not reduce or otherwise 
limit the powers or authority of each such governmental en-
§4-10-6. Continuation or reestablishment of governmental entities or programs scheduled for termination.

The life of any governmental entity or program scheduled for termination under the provisions of section four of this article may be continued or reestablished by the Legislature for a period of time not to exceed six years.

§4-10-7. Joint committee on government operations created; membership; compensation and expenses; meetings.

There is hereby created a statutory body to be known as the joint committee on government operations. Said committee shall be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be appointed from the same political party; five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party; and five citizens of this state who are not legislators, public officials or public employees, to be appointed by the governor to serve at his will and pleasure, not more than three of whom shall be appointed from the same political party, and at least one of whom shall reside in each congressional district of this state. All citizen members shall sign a conflict of interest statement. The committee shall be headed by two cochairmen, one to be selected by the president of the Senate from the members appointed from the Senate, and one to be selected by the speaker of the House of Delegates from the members appointed from the House of Delegates. All members of the committee shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and reimbursement for expenses in connection with performance of interim duties between regular sessions of the Legislature as may be authorized by the citizens legislative compensation commission established by section thirty-three,
article six of the constitution of West Virginia. Each citizen
member of the committee shall receive thirty-five dollars
per diem for each day or substantial portion thereof that he is
engaged in the work of the committee, in addition to reim-
bursement for his necessary expenses incurred in the perfor-
mance of his duties under this article, such reimbursement to
be subject to the same limitations as govern the expenses of
the legislative members of the committee. Compensation and
expenses shall be paid from an appropriation to be made
expressly for the committee, but if no such appropriation be
made or the total amount appropriated has been expended,
such expenses shall be paid from the appropriation under
"Account No. 103 for Joint Expenses," but no expense of any
kind whatever payable under said Account No. 103 for joint
expenses shall be incurred unless first approved by the joint
committee on government and finance. The committee shall
meet upon call of the cochairs or either of them and may
meet at any time, both during sessions of the Legislature and
in the interim.

§4-10-8. Powers of the committee; failure of witnesses to appear,
testify or produce records; public hearings; allowance of
per diem and mileage for witnesses.

In order to carry out the duties set forth in section nine
of this article, the committee, or any duly authorized em-
ployee of the committee, shall have access to any and all
records of every state governmental entity or program sched-
uled for termination under the provisions of section four of this
article.

In addition to its regular and special meetings, the com-
mittee, or any employee duly authorized by the committee, is
compelled to hold public hearings in furtherance of the pur-
poses of this article, at such times and places within the state
as may be deemed desirable, and any member of the com-
mittee shall have the power to administer oaths to persons
testifying at such hearings or meetings.

By subpoena, issued over the signature of either cochairman
of the committee and served in the manner provided by law,
the committee may summon and compel the attendance of
witnesses and their examination under oath and the production
of all books, papers, documents and records necessary or con-
venient to be examined and used by the committee in the per-
formance of its duties. If any witness subpoenaed to appear at
any hearing or meeting shall refuse or fail to appear or to
answer questions put to him, or shall refuse or fail to produce
books, papers, documents or records within his control when
the same are demanded, the committee, in its discretion, may
enforce obedience to its subpoena by attachment, fine or im-
prisonment, as provided in section five, article one of this
chapter; or it may report the facts to the circuit court of Ka-
 nawha County or any other court of competent jurisdiction
and such court shall compel obedience to the subpoena as
though such subpoena had been issued by such court in the
first instance.

Witnesses subpoenaed to attend such hearings or meetings,
except officers or employees of the state, shall be allowed the
same mileage and per diem as is allowed witnesses before any
petit jury.

§4-10-9. Performance and fiscal audits of governmental entities and
programs by the committee.

It shall be the duty of the committee to conduct a perfor-
mance and fiscal audit of every governmental entity or program
scheduled for termination to ascertain whether there is a de-
monstrable need for the continuation of the particular entity or
program under consideration, and whether the entity or pro-
gram should be continued.

Following a performance and fiscal audit, as hereinafter
provided, the committee shall cease further inquiry regarding
any such governmental entity or program and shall report its
findings and recommendations to the Legislature as provided
in section ten of this article.

In conducting such performance and fiscal audits, the com-
mittee shall consider all relevant factors and, among other
things, determine the following:

(1) The nature of the objectives intended for the program or
entity and the problem or need which it was intended to ad-
address, the extent to which the objectives have been achieved, and any activities of the entity or program in addition to those granted by statute and the authority for these activities;

(2) The extent to which the governmental entity or program has operated in the public interest and the extent to which its operation has been impeded or enhanced by existing statutes and any other circumstances bearing upon the governmental entity's or program's capacity or authority to operate in the public interest, including budgetary, resource and personnel matters;

(3) The extent to which the jurisdiction of the entity or program duplicates those of other entities and programs and the extent to which the entity or program or its activities could be consolidated with others;

(4) The efficiency with which the agency operates;

(5) The extent to which the governmental entity or program has recommended statutory changes to the Legislature which would benefit the public;

(6) The extent to which the entity or program issues and enforces rules relating to potential conflicts of interest of its employees;

(7) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the governmental entity or program;

(8) The extent to which the governmental entity or program has encouraged participation by the public in making its decisions;

(9) The impact in terms of federal intervention or loss of federal funds if the agency is abolished;

(10) The extent to which the governmental entity or program has caused an unnecessary burden on any citizen or other governmental entity or program by its decisions and activities.

The joint committee on government operations may employ such persons, skilled in the field of performance audit, as it
may deem necessary to carry out its duties and responsibilities under this section.

§4-10-10. Reports by the committee.

The committee shall complete its deliberations with respect to any governmental entity or program scheduled to be terminated and make a report thereon to the Legislature not later than ten days after the Legislature convenes in regular session in the year of the scheduled termination for the entity or program: Provided, That any such report required in the year one thousand nine hundred eighty-one, and every fourth year thereafter shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. Such report shall consist of a full and complete analysis of the governmental entity or program including the need for the governmental entity or program, the benefits to the public as opposed to the burden on the public and such other matters as are expressly mandated to be considered by the committee as set forth in section nine of this article, together with the recommendations of the committee. The committee shall make one of three recommendations: (1) The governmental entity or program be terminated as scheduled, (2) the governmental entity or program be continued and reestablished, or (3) the governmental entity or program be continued and reestablished, but the statutes governing the entity should be amended in specific ways to correct discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, inefficiency, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact and any other deficiencies.

Copies of such reports shall be made immediately available to all members of the Legislature, to the governmental entity or program which is the subject of the report and the public generally. A copy of each report shall be formally filed by the committee with the clerk of each house.

§4-10-11. Bill for continuation and reestablishment of governmental entity.

In the event the committee recommends the continuation and reestablishment of such governmental entity or program,
its report shall be accompanied by a bill originating in such standing committee to effectuate its recommendation.

No bill shall provide for the continuation and reestablishment of more than one governmental entity or program.

§4-10-12. Preservation of rights and claims.

Nothing in this article shall be construed as adversely affecting any right or claim by any person against a governmental entity or program or by any governmental entity or program against any person. Responsibility for prosecuting or defending any such rights or claims should the Legislature fail to continue and reestablish a governmental entity or program within one year after its termination shall be assumed by the attorney general of the state.

§4-10-13. Article not to be construed as limiting new legislation.

Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or the Legislature from considering any bill that would create a new state governmental entity or program or amend the law with respect to an existing one.

§4-10-14. Immediate termination of certain governmental entities.

(a) The Legislature finds that the following governmental entities or programs are inactive and unnecessary and should not be continued:

(1) The commission on energy, economy and environment, created in article seventeen, chapter five of this code;

(2) The bureau of negro welfare and statistics, created in article five, chapter twenty-nine of this code;

(3) The Droop mountain battlefield commission, created in section one, article four, chapter twenty of this code;

(4) The Prickett's Fort state park commission, created in section one, article four, chapter twenty of this code;

(5) The Point Pleasant battle monument commission, created in section one, article four, chapter twenty of this code;
(6) The Philippi battlefield memorial commission, created in section one, article four, chapter twenty of this code; and

(7) The mining council, created in section two, article six-b, chapter twenty of this code.

(b) The governmental entities or programs listed in subsection (a) of this section shall be terminated on the first day of July, one thousand nine hundred seventy-nine.

CHAPTER 105

(Com. Sub. for H. B. 920—By Mr. Shiflet and Mr. Milleson)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto a new section, designated section two-a, all relating to the assessment of property for ad valorem tax purposes; requiring notice to property owners when the assessed valuation of any item of real property is to be increased more than ten percent higher than the assessed valuation on such property in the previous tax year; the duties of the assessor and the county commission sitting as the board of equalization and review with respect thereto; the time of such notice; the time of meeting of the county commission sitting as the board of equalization and review and the duration of such meeting; prohibiting entry of such increase in the property books until the required notice is given or satisfied; and the methods by which such notice may be given, satisfied or waived.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice.
§11-3-24. Review and equalization by county commission.

§11-3-2a. Notice of increased assessment required; exceptions to notice.

If the assessor determines the assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year and the increase be entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice must be given at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review for that tax year and advise the person assessed or the person controlling the property of his right to appear and seek an adjustment in the assessment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in any one or more districts in which case the notice shall be by publication thereof by a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

1. The taxpayer having signed the assessment form after it had been completed showing the increase;
2. Notice was given as provided in section three-a of this article; or
3. The person so assessed executing acknowledgment of the notice of the increase.

§11-3-24. Review and equalization by county commission.

The county commission shall annually, not later than the
first day of February, meet for the purpose of reviewing and
equalizing the assessment made by the assessor. It shall not
adjourn for longer than three days at a time until this work
is completed, and shall not remain in session for a longer
period than twenty-eight days and shall not adjourn sine die
before the fifteenth day of February. At the first meeting,
the assessor shall submit the property books for the current
year, which shall be complete in every particular, except
that the levies shall not be extended. The assessor and his
assistants shall attend and render every assistance possible
in connection with the value of property assessed by them.
The commission shall proceed to examine and review the prop-
erty books, and shall add on the books the names of persons,
the value of personal property and the description and value of
real estate liable to assessment which was omitted by the
assessor. They shall correct all errors in the names of
persons, in the description and valuation of property, and
they shall cause to be done whatever else may be necessary
to make the valuation comply with the provisions of this
chapter. But in no case shall any question of classification
or taxability be considered or reviewed. If the commission
determine that any property or interest is assessed at more
or less than its true and actual value, it shall fix it at the true
and actual value. But no assessment shall be increased without
giving the property owner at least five days' notice, in writing,
and signed by the president of the commission, of the inten-
tion to make the increase. Service upon the property owner
shall be sufficient, or upon his agent or attorney in person,
or if sent by registered mail to such property owner, his agent,
or attorney, at the last known place of abode. If he be not
found and have no known place of abode, then notice shall be
given by publication thereof as a Class I legal advertisement
in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county. The date of the publication
shall be at least five days prior to the increase. When it is
desired to increase the entire valuation in any one district by
a general increase, notice shall be given by publication thereof
as a Class II-O legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county. The date of the last publication shall be at least five days prior to the increase in valuation. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided.

The clerk of the county commission shall publish notice of the time, place and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The expense of publication shall be paid out of the county treasury.

If any person fails to apply for relief at this meeting, he shall have waived his right to ask for correction in his assessment list for the current year, and shall not thereafter be permitted to question the correctness of his list as finally fixed by the county commission, except on appeal to the circuit court. After the county commission completes the review and equalization of the property books, a majority of the commission shall sign a statement that it is the completed assessment of the county for the year; then the property books shall be delivered to the assessor and the levies extended as provided by law.

CHAPTER 106
(Com. Sub. for H. B. 892—By Mr. Lewis)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections two, ten and eleven, article four, chapter eleven 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 two new sections, designated sections eleven and twelve, all relating to the assessment of real property; providing that mobile home trailers used for residential purposes permanently affixed to the land and owned
by the owner of the land be entered on the landbooks of each county and shall be assessed as real property; providing that mobile homes used by the owner for residential purposes and located on land not owned by the owner of the mobile home shall be assessed on personal property books as Class II property; and providing that mobile homes situate upon property owned by a person other than the owner of the mobile home shall be classified as personal property.

Be it enacted by the Legislature of West Virginia:

That sections two, ten and eleven, article four, chapter eleven 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 two new sections, designated sections eleven and twelve, to read as follows:

Article

4. Assessment of Real Property.
5. Assessment of Personal Property.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.
§11-4-10. Land and buildings assessed separately; town lots; back taxing of omitted buildings.

§11-4-11. New buildings.

§11-4-2. Form of landbooks.

1 The tax commissioner shall prescribe a form of landbook and the information and itemization to be entered therein, which shall include separate entries of:

4 (1) All real property owned, used and occupied by the owner exclusively for residential purposes, including mobile homes, permanently affixed to the land and owned by the owner of the land; (2) all farms including land used for agriculture, horticulture and grazing occupied by the owner or bona fide tenant; (3) all other real property; and, for each entry there shall be shown; (4) the value of land, the value of buildings and the aggregate value; (5) the character and estate of the owners, the number of acres or lots and the local description of the tracts or lots; (6) the amount of taxes assessed against each tract or lot for all purposes.
§11-4-10. **Land and buildings assessed separately; town lots; back taxing of omitted buildings.**

Land and the buildings or structures erected thereon shall be assessed separately and the value of each entered separately in the landbooks. Land, except town lots, shall be valued by the acre, and town lots shall be designated by the number of the lot and the name of the street on which it fronts, provided the lots be numbered and the streets of the town designated by name. Every assessor shall, in each year, in arriving at the value of the buildings, including mobile homes used for residential purposes permanently affixed to the land and owned by the owner of the land, take into account any improvements or changes affecting the value of such buildings. If the assessor shall discover any building which has been omitted from the landbook for any previous years, he may back tax the same in the same manner and to the same extent as in the case of personal property.

§11-4-11. **New buildings.**

No new building, mobile home used for residential purposes permanently affixed to the land and owned by the owner of the land, addition or improvement shall be assessed until it is so far finished as to be fit for use, but the material in the same shall be entered in the personal property books and assessed as provided by this chapter.

**ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.**

§11-5-11. Mobile homes used by the owner for residential purposes and located on land not owned by the mobile homeowner.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

§11-5-11. **Mobile homes used by the owner for residential purposes and located on land not owned by the mobile homeowner.**

Mobile homes used and occupied by the owner thereof exclusively for residential purposes and located on land not owned by the owner of the mobile home shall be assessed on the personal property books as Class II property.
§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

Mobile homes situate upon property owned by a person other than the owner of the mobile home shall be classified as personal property whether or not said mobile home is permanently affixed to the real estate and unless subject to assessment as Class II property under section eleven of this article or section two, article four of this chapter, shall be assessed as Class III or Class IV personal property, as may be appropriate in the circumstances.

CHAPTER 107
(H. B. 1116—By Mr. Albright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of certain terms used within the West Virginia tax procedure and administration act; and making the provisions of said act applicable to former officers and employees of the state.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, 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 10. PROCEDURE AND ADMINISTRATION.

§11-10-4. Definitions.

For the purpose of this article, the term:

(a) "Officer or employee of this state" shall include, but shall not be limited to, any former officer or employee of the state of West Virginia.
(b) "Person" shall include, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint adventure, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee or member of any of the foregoing who, as such officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article and the provisions of any of the other articles of this chapter which impose taxes administered by the tax commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context of this article or any of the other articles of this chapter which impose taxes administered by the tax commissioner.

(c) "State" means any state of the United States or the District of Columbia.

(d) "Tax" or "taxes" includes within the meaning thereof taxes specified in section three of this article, additions to tax, penalties and interest, unless the intention to give the same a more limited meaning is disclosed by the context.

(e) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(f) "Taxpayer" means any person required to file a return for any tax administered under this article, or any person liable for the payment of any tax administered under this article.

(g) "Tax administered under this article" means any tax to which this article applies as set forth in section three of this article.

(h) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(i) "This state" means the state of West Virginia.
CHAPTER 108
(S. B. 122—By Mr. Brotherton, Mr. President)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article fifteen by adding thereto a new section, designated section eleven; and to amend and reenact section three, article fifteen-a of said chapter, all relating to consumers sales tax; providing for a phased reduction and eventual exemption of the tax on food; specifying rates of tax on food for certain ensuing fiscal years; defining terms; excluding food sold by a food service establishment from definition of food; preserving the exemption from tax of sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling food for human consumption to consumers and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which would be subject to the tax except for the exemption of food; exempting sales of insulin to consumers for medical purposes; exempting sales to certain schools approved by the board of regents to award degrees; and exempting from the use tax tangible personal property the gross receipts from the sale of which are exempt from the retail sales tax.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section eleven; and that section three, article fifteen-a of said chapter be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

Article
15. Consumers Sales and Service Tax.
15A. Use Tax.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


1 The following sales and services shall be exempt:
2 (1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;
3 (2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
4 (3) Sales of textbooks required to be used in any of the schools of this state;
5 (4) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
6 (5) Sales of motor vehicles which are titled by the department of motor vehicles which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;
7 (6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or sales of property or services to corporations or organizations qualified under section 501(c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501(c) (4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character, or sales of property or services to persons engaged in this state in the business of con-
tracting, manufacturing, transportation, transmission, communication, or in the production of natural resources:

Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

(7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

(8) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article or which would be subject to tax under this article but for the exemption for food provided in section eleven of this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

(9) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;

(10) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work;

(11) Sales and services, fire fighting, or station house equipment, including construction and automotive, made
to any volunteer fire department organized and incorporated under the laws of the state of West Virginia;

(12) Sales of newspapers when delivered to consumers by route carriers;

(13) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(14) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;

(15) Sales and services performed by day care centers;

(16) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by corporations or organizations qualified under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501 (c) (4) of the Internal Revenue Code of 1954, as amended;

(17) Bank safety deposit boxes;

(18) Sales of property or services to a school which has approval from the West Virginia board of regents to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended.

§11-15-1L. Exemption of food intended for human consumption; transition reduction of tax; definitions and exceptions.

1 (a) Exemption.—Sales of food intended for human consumption made on or after the first day of July, one thousand nine hundred eighty-one, shall be exempt from the tax imposed by this article. This exemption shall be in addition to any other exemption permitted under this article.

(b) Transition reduction of tax on July 1, 1979 and July 1, 1980.—The amount of tax imposed by section three
of this article on sales of food for human consumption shall be reduced as follows:

(1) Sales of food intended for human consumption made before the first day of July, one thousand nine hundred seventy-nine, shall be taxed as provided in section three of this article.

(2) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred seventy-nine, shall be taxed as follows:

(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale, where the monetary consideration is from twenty-six cents to fifty cents, both inclusive, one cent.

(C) On each sale where the monetary consideration is from fifty-one cents to one dollar, both inclusive, two cents.

(D) On each fifty cents of monetary consideration or fraction thereof in excess of one dollar, one cent.

(3) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred eighty, but before the first day of July, one thousand nine hundred eighty-one, shall be taxed as follows:

(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale where the monetary consideration is from twenty-six cents to one dollar, both inclusive, one cent.

(C) On each one dollar or fraction thereof in excess of one dollar, one cent. Separate sales such as daily or weekly deliveries, shall not be aggregated for purpose of computation of this tax even though such sales are aggregated in the billing or the payment.

(c) Definition of food.—For purposes of this section,
and except as provided in subsection (d), the term "food" shall mean and include all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food, including, by way of illustration and not by limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, flour and flour products, sugar and sugar products, milk and milk products, cocoa and cocoa products, coffee and coffee substitutes, tea, herbs, spices, salt and salt substitutes, condiments, candy and confections, soft drinks, soft drink mixes and syrups, tenderizers, food coloring, bottled drinking water, sugar substitutes, oleomargarine, shortening, gelatins, baking and cooking ingredients, mushrooms, spreads, relishes, desserts, flavorings, chewing gum, edible seeds, nuts and berries.

(d) The term "food" shall not include medicines, vitamins and dietary supplements whether in liquid, powdered, granular, tablet, capsule, lozenge, or pill form; spirituous, malt or vinous liquors or beer; ice; tobacco or tobacco products; vending machine sales; or food sold by a food-service establishment.

(e) Definition of "food-service establishment."—For purposes of this section, and except as provided in subsection (f), the term "food-service establishment" means any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, industrial-feeding establishment, private, public or nonprofit organization or institution routinely serving food, catering operation, commissary or any other similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any food-service establishment which operates for a limited period of time in connection with events such as, but not limited to, a fair, carnival, circus, public exhibition, athletic event, or similar gathering: Provided, That delicatessen, grocery, market, dairy or bakery stores shall not be considered
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food-service establishments within the meaning of this section except for the sale of dinners, luncheons, barbecued chicken other than barbecued chicken sold whole and unsliced, sandwiches, snacks, hot pizzas, and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters.

(f) The term "food-service establishment" shall not include:

1. Food sold by public or private schools, school sponsored student organizations, or school sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours; but not those sales of food made to the general public.

2. Food sold by a public or private college or university or by a student organization officially recognized by such college or university to students enrolled at such college or university when such sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed.

3. Food sold by a nonprofit organization or a governmental agency under a program funded by a state or the United States to low-income elderly persons at or below cost.

4. Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose.

5. Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the
revenue obtained from selling the food is actually used in carrying on such functions and activities. For the purpose of this paragraph, “religious organizations” means any organization the property of which is exempt from taxation under article ten, section one of the West Virginia Constitution.

ARTICLE 15A. USE TAX.


1 The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

4 (1) All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while within the state.

8 (2) Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.

13 (3) Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That the exemptions granted in this subdivision three are hereby suspended, nullified and made inoperative during the period from the first day of April, one thousand nine hundred sixty-nine to midnight of the thirty-first day of March, one thousand nine hundred seventy: Provided further, That after midnight of the thirty-first day of March, one thousand nine hundred seventy, the exemptions granted in this subdivision three shall again be in full force and effect as if they had not been suspended, nullified and made inoperative as heretofore provided.

29 (4) Tangible personal property, the gross receipts or
the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.

(5) Tangible personal property, the sale of which in this state is not subject to the West Virginia consumers sales tax.

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CHAPTER 109

(S. B. 428—By Mr. Fanning)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-one and twenty-two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales tax; requiring persons operating two or more places of business to file a schedule showing sales and tax collections for each place of business on an annual basis in lieu of filing such schedules monthly.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one and twenty-two, 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.


1 (a) Date due.—On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the tax commissioner, showing:

6 (1) Total gross proceeds of his business for preceding tax year,
(2) Gross proceeds upon which the tax for that year was computed, and

(3) Any other information necessary in the computation or collection of the tax that the tax commissioner may require.

(b) Supporting schedule for consolidated return.—Whenever a person operates two or more places of business and files a consolidated monthly return, a schedule shall be attached to the consolidated annual return showing, for each place of business, total sales and charges for rendering services, total transactions subject to tax and total tax collections.

(c) Payment.—After deducting the amount of prior payments during the tax year, the taxpayer shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the tax commissioner. The taxpayer or his duly authorized agent shall verify the return under oath.

(d) Extension of time.—The tax commissioner for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article.


A person operating two or more places of business of like character from which are made or dispensed sales or services which are taxable hereunder shall file consolidated returns covering all such sales or services.

CHAPTER 110

(H. B. 1295—By Mr. Polan and Mr. Teets)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article nineteen by adding
thereto a new section, designated section five-a, relating to soft drinks tax and eliminating the requirement that persons manufacturing, bottling, importing, distributing or selling soft drinks obtain a soft drinks permit; requiring persons subject to the soft drinks tax to file monthly reports and additional reports required by the commissioner; and permitting extension of time for filing such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5a. Due date of reports; additional reports; extension of time.

Every person subject to the tax imposed by this article shall on or before the fifteenth day of each month make and file with the commissioner a report of such person's operations for the preceding month to verify liability for tax under this article. This report shall be in a form prescribed by the tax commissioner.

The commissioner may by fifteen days written notice require the filing of such additional reports as he deems necessary to verify a person's liability under this article.

Upon written application setting forth good cause, the commissioner may extend the time for filing such reports or additional reports on such terms and conditions as he may require.

CHAPTER 111

(H. B. 1047—By Mr. Speaker, Mr. See)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-nine, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-nine, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred seventy-nine, shall be given effect.

CHAPTER 112

(H. B. 1046—By Mr. Speaker, Mr. See)

[Passed February 20, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-nine, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-nine, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred seventy-nine, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(2) The term “corporation” means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

(3) The term “domestic corporation” means any corporation organized under the laws of West Virginia.

(4) The term “foreign corporation” means any corporation other than a domestic corporation.

(5) The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico,
any territory or possession of the United States, and any
foreign country or political subdivision thereof.

(6) The term "taxable year" means the taxable year for
which the taxable income of the taxpayer is computed under
the federal income tax law.

(7) The term "taxpayer" means a corporation subject to
the tax imposed by this article.

(8) The term "tax" includes, within its meaning, interest
and penalties unless the intention to give it a more limited
meaning is disclosed by the context.

(9) The term "commercial domicile" means the principal
place from which the trade or business of the taxpayer is
directed or managed.

(10) The term "compensation" means wages, salaries,
commissions and any form of remuneration paid to employees
for personal services.

(11) The term "West Virginia taxable income" means the
taxable income of a corporation as defined by the laws of
the United States for federal income tax purposes, adjusted
as provided in section six: Provided, That in the case of a
corporation having income from business activity which is
taxable without this state, its "West Virginia taxable income"
shall be such portion of its taxable income as so defined and
adjusted as is allocated or apportioned to this state under the
provisions of section seven.

(12) The term "business income" means income arising
from transactions and activity in the regular course of the
taxpayer's trade or business and includes income from tangible
and intangible property if the acquisition and disposition of
the property constitute integral parts of the taxpayer's regular
trade or business operations.

(13) The term "nonbusiness income" means all income
other than business income.

(14) The term "public utility" means any business activity
to which the jurisdiction of the public service commission
of West Virginia extends under section one, article two,
chapter twenty-four of the code of West Virginia.
(15) The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term "this state" means the state of West Virginia.

CHAPTER 113
(S. B. 195—By Mr. Jones and Mr. Moreland)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-a, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the time in which a purchaser of nonexistent or erroneously listed land may obtain a refund of the purchase price.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALE OF LAND FOR TAXES.

§11A-3-20a. Refund to purchaser of payment made at sheriff’s sale where property is subject of an erroneous assessment or is otherwise nonexistent.

If, after payment of the amount bid at a sheriff’s sale and upon the examination of title, as required by section twenty of this article, the purchaser shall discover that the property purchased at such sale is the subject of an erroneous assessment or is otherwise nonexistent, such purchaser may submit the certificate of an attorney at law that the property is the subject of an erroneous assessment or is otherwise nonexistent, whereupon the sheriff shall cause the moneys so paid to be refunded: Provided, That the certificate shall be submitted by the first day of January of the second year following the sale. Upon refund, the sheriff shall inform the assessor of the errone-
AN ACT to amend and reenact section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and three, article five of said chapter; and to amend article one of said chapter by adding thereto three new sections, designated sections sixty, sixty-one and sixty-two, relating to definitions; broadening the jurisdiction of department of public safety as to traffic regulations and laws of the road; making negligent homicide an offense anywhere it occurs in the state; making reckless driving an offense in certain designated areas of the state; and penalties.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Words and Phrases Defined.
2. Obedience to and Effect of Traffic Laws.
3. Serious Traffic Offenses.

ARTICLE I. WORDS AND PHRASES DEFINED.
§17C-1-60. Parking area.
§17C-1-61. Institution of higher education.
§17C-1-62. Residential street.

§17C-1-60. Parking area.
1. “Parking area” means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge.
§17C-1-61. Institution of higher education.

1 The term "institution of higher education" shall mean "state colleges," "state college," "state universities" and "universities," "state university," and "university," and "community college" as defined in subsections (b), (c), (d), (e) and (f), section two, article twenty-six, chapter eighteen of this code and any other institution as defined by sections 401 (f), (g), (h) of the Federal Higher Education Facilities Act of 1963, as amended.

§17C-1-62. Residential street.

1 "Residential street" means the entire width between the boundary lines of every way, whether publicly or privately maintained, located within any subdivision, development or other similar area used primarily for residential purposes when any part thereof is open to the common use of those living in said area for the purpose of vehicular travel.

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer.

1 (a) It shall be the duty of the department of public safety and its members to enforce the provisions of this chapter and other laws of this state governing the operation of vehicles upon the streets and highways of this state as defined in section one, article two, chapter seventeen-b of this code or in other designated places specifically referred to in a given section in this chapter; and it shall be the duty of sheriffs and their deputies and of the police of cities and towns to render to the department of public safety such assistance in the performance of said duties as the superintendent of the department of public safety may require of them.

12 (b) The West Virginia commissioner of highways is authorized to designate employees of the West Virginia department of highways as special officers to enforce the provisions of this chapter only when such special officers are directing traffic upon bridges and the approaches to bridges which are a part of the state road system when any such bridge needs special traffic direction and the superintendent of the department of public safety has informed the West Virginia commis-
20 sioner of highways that he is unable to furnish personnel for
21 such traffic direction. The West Virginia commissioner of
22 highways shall provide a blanket bond in the amount of five
23 thousand dollars for any such employee so designated, and
24 for all employees designated as members of official West
25 Virginia department of highways weighing crews.
26
27 (c) No person shall willfully fail or refuse to comply with
28 any lawful order or direction of any police officer invested by
29 law with authority to direct, control or regulate traffic.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-1. Negligent homicide; penalties.
§17C-5-3. Reckless driving; penalties.

§17C-5-1. Negligent homicide; penalties.

1 (a) When the death of any person ensues within one year
2 as a proximate result of injury received by the driving of
3 any vehicle anywhere in this state in reckless disregard of
4 the safety of others, the person so operating such vehicle
5 shall be guilty of negligent homicide.

6 (b) Any person convicted of negligent homicide shall be
7 punished by imprisonment for not more than one year or by
8 fine of not less than one hundred dollars nor more than one
9 thousand dollars, or by both such fine and imprisonment.

10 (c) The commissioner shall revoke the license or permit
11 to drive and any nonresident operating privilege of any
12 person convicted of negligent homicide.

§17C-5-3. Reckless driving; penalties.

1 (a) Any person who drives any vehicle upon any street
2 or highway, or upon any residential street, or in any parking
3 area, or upon the ways of any institution of higher education,
4 whether public or private, or upon the ways of any state
5 institution, or upon the property of any county boards of
6 education, or upon any property within the state park and
7 public recreation system established by the director of the
8 department of natural resources pursuant to section three,
9 article four, chapter twenty of this code in willful or wanton
10 disregard for the safety of persons or property is guilty of
11 reckless driving.
(b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the director of the department of natural resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving may be punished upon a first conviction by imprisonment for a period of not less than five days nor more than ninety days, or by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by both such fine and imprisonment, and on a second or subsequent conviction may be punished by imprisonment for not less than ten days nor more than six months, or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment.

CHAPTER 115
(Com. Sub. for H. B. 1286—By Mr. Chambers and Mr. Holmes)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and ten, article six, and section five-a, article nine, all of said chapter, all relating to unemployment compensation; definitions; excluding certain employees from the terms totally or partially unemployed as they relate to vacation pay; requiring that to qualify for benefits an unemployed individual do that which a reasonably prudent person in his circumstances would do in seeking work; requiring that to qualify for benefits an unemployed individual earn wages in more than one quarter; changing the maximum benefit to an amount equal to twenty-eight times the weekly benefit rate; changing the maximum weekly benefit rate to seventy percent of the average weekly wage in West Virginia; and increasing the allowable expenditure
from the employment security special administration fund to five hundred thousand dollars in any fiscal year where those expenditures are to cover federal funds authorized but not yet received and subject to repayment to the fund.

Be it enacted by the Legislature of West Virginia:

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

Article
6. Employee Eligibility; Benefits.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires otherwise:
2 “Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.
3 “Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.
4 “Average annual payroll” means the average of the last three annual payrolls of an employer.
5 “Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.
6 “Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.
7 “Base period wages” means wages paid to an individual during the base period by all his base period employers.
"Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of the calendar week in which a valid claim is effective and thereafter the fifty-two week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual with respect to his unemployment.

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

"Commissioner" means the employment security commissioner.

"Computation date" means June thirty of the year immediately preceding the January one on which an employer's contribution rate becomes effective.

"Employnig unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in subdivision (9) (b) of the definition of "employment" in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.
"Employer" means:

1. Until January one, one thousand nine hundred seventy-two, any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;

2. Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

3. Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

4. Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

5. Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any three-week period, in any calendar year, has in employment ten or more individuals;

6. For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

7. Any employing unit which, after December thirty-one, one thousand nine hundred seventy-one (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred
dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day) except as provided in subdivisions eleven and twelve hereof;

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment, as defined in paragraphs (b) and (c) of subdivision (9) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to
the other provisions of this section, service performed
after December thirty-one, one thousand nine hundred
seventy-one, by an employee, as defined in section 3306(i)
of the Federal Unemployment Tax Act, including service in
interstate commerce;

(3) Any service performed prior to January one, one
thousand nine hundred seventy-two, which was employment
as defined in this section prior to such date and, subject to
the other provisions of this section, service performed
after December thirty-one, one thousand nine hundred seventy-
one, including service in interstate commerce, by any officer
of a corporation;

(4) An individual's entire service, performed within or
both within and without this state if: (a) The service is
localized in this state; or (b) the service is not localized
in any state but some of the service is performed in this
state and (i) the base of operations, or, if there is no base
of operations, then the place from which such service is
directed or controlled, is in this state; or (ii) the base
of operations or place from which such service is directed
or controlled is not in any state in which some part of
the service is performed but the individual's residence is in
this state;

(5) Service not covered under paragraph four of this
subdivision and performed entirely without this state with
respect to no part of which contributions are required and
paid under an unemployment compensation law of any other
state or of the federal government, shall be deemed to be
employment subject to this chapter if the individual per-
forming such services is a resident of this state and the
commissioner approves the election of the employing unit
for whom such services are performed that the entire service
of such individual shall be deemed to be employment subject
to this chapter;

(6) Service shall be deemed to be localized within a state,
if: (a) The service is performed entirely within such state; or
(b) the service is performed both within and without such
state, but the service performed without such state is incidental
to the individual’s service within this state, as, for example, is temporary or transitory in nature or consists of isolated trans-
actions;

(7) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that: (a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in section three hundred five of an act of Congress entitled Social Security Act amendment of 1946, approved August tenth, one thousand nine hundred forty-six) on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed and controlled, is within this state;

(9) (a) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: Provided, That such service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (7) of that act and is not excluded from “employment” under subdivision (11) of the exclusion from employment;

(b) Service performed after December thirty-one, one thousand nine hundred seventy-seven, in the employ of this state or any of its instrumentalities or political subdivision thereof or any of its instrumentalities or any instrumentality of more
than one of the foregoing or any instrumentality of any fore-
going and one or more other states or political subdivi-
sions:

Provided, That such service is excluded from "employment"
as defined in the Federal Unemployment Tax Act by section3306(c) (7) of that act and is not excluded from "employment"
under subdivision (15) of the exclusion from employment in
this section; and

(c) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of a non-
profit educational institution which is not an institution of
higher education;

(10) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of a religious, charitable, educational or other organi-
ization but only if the following conditions are met:

(a) The service is excluded from "employment" as de-
defined in the Federal Unemployment Tax Act solely by reason
of section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in em-
ployment for some portion of a day in each of twenty differ-
ent weeks, whether or not such weeks were consecutive, with-
in either the current or preceding calendar year, regardless of
whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United
States, performed outside the United States after Decem-
ber thirty-one, one thousand nine hundred seventy-one (ex-
cept in Canada and in the case of Virgin Islands after Dec-
ember thirty-one, one thousand nine hundred seventy-one,
and before January one of the year following the year in
which the secretary of labor approves for the first time
an unemployment insurance law submitted to him by the
Virgin Islands for approval) in the employ of an Ameri-
can employer (other than service which is deemed "em-
ployment" under the provisions of subdivision (4), (5) or
(6) of this definition of "employment" or the parallel pro-
visions of another state’s law) if:

(a) The employer's principal place of business in the
United States is located in this state; or
(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer," for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two-thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor [not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in subparagraph (b) of this subdivision (12)], or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an
alien referred to in division (ii) of this subparagraph) ten
or more individuals, regardless of whether they were employed
at the same moment of time;

(b) Such service is not performed in agricultural labor
if performed before January one, one thousand nine hundred
eighty, by an individual who is an alien admitted to the
United States to perform service in agricultural labor pur-
suant to sections 214(c) and 101(a) (15)(H) of the Immi-
grantion and Nationality Act;

c) For the purposes of the definition of employment,
any individual who is a member of a crew furnished by a
crew leader to perform service in agricultural labor for
any other person shall be treated as an employee of such
crew leader (i) if such crew leader holds a valid certificate
of registration under the Farm Labor Contractor Registration
Act of 1963; or substantially all the members of such crew
operate or maintain tractors, mechanized harvesting or crop-
dusting equipment, or any other mechanized equipment, which
is provided by such crew leader; and (ii) if such individual
is not an employee of such other person within the meaning
of subdivision (7) of the definition of employer;

d) For the purposes of this subdivision (12), in the
case of any individual who is furnished by a crew leader
to perform service in agricultural labor for any other person
and who is not treated as an employee of such crew leader
under subparagraph (c) of this subdivision (12), (i) such
other person and not the crew leader shall be treated as
the employer of such individual; and (ii) such other person
shall be treated as having paid cash remuneration to such
individual in an amount equal to the amount of cash re-
muneration paid to such individual by the crew leader
(either on his own behalf or on behalf of such other person)
for the service in agricultural labor performed for such other
person;

e) For the purposes of this subdivision (12), the term
“crew leader” means an individual who (i) furnishes in-
dividuals to perform service in agricultural labor for any
other person, (ii) pays (either on his own behalf or on
behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and (iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(13) The term "employment" shall include domestic service after December thirty-one, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December thirty-one, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

Notwithstanding the foregoing definition of "employment," if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in subdivision (9) (a) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under
the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of
this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) shall not be deemed to be applicable with respect to service
performed in connection with commercial canning or com-
mercial freezing or in connection with any agricultural or
horticultural commodity after its delivery to a terminal market
for distribution for consumption;

(e) On a farm operated for profit if such service is not
in the course of the employer's trade or business or is
domestic service in a private home of the employer. As
used in this subdivision (5), the term "farm" includes stock,
dairy, poultry, fruit, fur-bearing animals, and truck farms,
plantations, ranches, greenhouses, ranges and nurseries,
or other similar land areas or structures used primari-
ly for the raising of any agricultural or horticultural
commodities;

(6) Domestic service in a private home, except as pro-
vided in subdivision (13) of the definition of "employment"
in this section;

(7) Service performed by an individual in the employ of his
son, daughter or spouse;

(8) Service performed by a child under the age of eigh-
ten years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an Ameri-
can vessel, performed on or in connection with such vessel,
if the operating office, from which the operations of the vessel
operating on navigable water within or without the United
States are ordinarily and regularly supervised, managed, direc-
ted and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-
dealers or insurance companies, exclusive of industrial insur-
ance agents, or by agents of investment companies, who are
compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or
convention or association of churches, or an organization
which is operated primarily for religious purposes and which
is operated, supervised, controlled or principally supported by
a church or convention or association of churches; or (ii) by a
duly ordained, commissioned or licensed minister of a church
in the exercise of his ministry or by a member of a religious
order in the exercise of duties required by such order; or
(iii) prior to January one, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution
of higher education; or (iv) in a facility conducted for the
purpose of carrying out a program of rehabilitation for individ-
uals whose earning capacity is impaired by age or physical
or mental deficiency or injury or providing remunerative
work for individuals who because of their impaired physical
or mental capacity cannot be readily absorbed in the competi-
tive labor market by an individual receiving such rehabilitation
or remunerative work; or (v) as part of an unemployment work-
relief or work-training program assisted or financed in whole
or in part by any federal agency or an agency of a state or
political subdivision thereof, by an individual receiving such
work relief or work training; or (vi) prior to January one,
one thousand nine hundred seventy-eight, for a hospital in a
state prison or other state correctional institution by an in-
mate of the prison or correctional institution, and after De-
cember thirty-one, one thousand nine hundred seventy-seven,
by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college
or university, if such service is performed (i) by a student who
is enrolled and is regularly attending classes at such school,
college or university, or (ii) by the spouse of such a student, if
such spouse is advised, at the time such spouse commences to
perform such service, that (I) the employment of such spouse
to perform such service is provided under a program to pro-
vide financial assistance to such student by such school,
college or university, and (II) such employment will not be
covered by any program of unemployment insurance;

(13) Service performed by an individual under the age of
twenty-two who is enrolled at a nonprofit or public educational
institution which normally maintains a regular faculty and
curriculum and normally has a regularly organized body of
students in attendance at the place where its educational ac-
tivities are carried on as a student in a full-time program,
taken for credit at such institution, which combines academic
instruction with work experience, if such service is an integral
part of such program, and such institution has so certified
to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section;

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of "employment" in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as (I) a major nontenured policy-making or advisory position, or (II) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of "employment," services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed,
certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition, all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from em-
Ch. 115] Unemployment Compensation

579 employment shall be deemed to be partially unemployed in any
580 week in which due to lack of work he performs no services
581 and with respect to which no wages are payable to him, or
582 in any week in which due to lack of full time work wages
583 payable to him are less than his weekly benefit amount plus
584 twenty-five dollars.

585 "Wages" means all remuneration for personal service, in­
586 cluding commissions and bonuses and the cash value of all
587 remuneration in any medium other than cash except for
588 agricultural labor and domestic service: Provided, That the
589 term "wages" shall not include:

590 (1) That part of the remuneration which, after remu­
591 neration equal to three thousand dollars has been paid to
592 an individual by an employer with respect to employment
593 during any calendar year, is paid after December thirty-one,
594 one thousand nine hundred thirty-nine, and prior to January
595 one, one thousand nine hundred forty-seven, to such indi­
596 vidual by such employer with respect to employment during
597 such calendar year; or that part of the remuneration which,
598 after remuneration equal to three thousand dollars with
599 respect to employment after one thousand nine hundred
600 thirty-eight has been paid to an individual by an employer
601 during any calendar year after one thousand nine hundred
602 forty-six, is paid to such individual by such employer during
603 such calendar year, except that for the purposes of sections
604 one, ten, eleven and thirteen, article six of this chapter, all
605 remuneration earned by an individual in employment shall
606 be credited to the individual and included in his com­
607 putation of base period wages: Provided, That notwith­
608 standing the foregoing provisions, on and after January
609 one, one thousand nine hundred sixty-two, the term
610 "wages" shall not include:

611 That part of the remuneration which, after remuneration
612 equal to three thousand six hundred dollars has been paid to
613 an individual by an employer with respect to employment
614 during any calendar year, is paid during any calendar year
615 after one thousand nine hundred sixty-one; and shall not
616 include that part of remuneration which, after remuneration
617 equal to four thousand two hundred dollars is paid during a
calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term employment shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, however, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided further, That if the definition of the term "wages" as contained in section 3306(b) of the Internal Revenue Code of 1954 as amended: (a) Effective prior to January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after January one, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two
hundred dollars, or effective on or after January one, one
thousand nine hundred seventy-eight, to include remuneration
in excess of six thousand dollars, paid to an individual by an
employer under the Federal Unemployment Tax Act during any
calendar year; wages for the purposes of this definition shall
include remuneration paid in a calendar year to an individual
by an employer subject to this article or his predecessor with
respect to employment during any calendar year up to an
amount equal to the amount of remuneration taxable under
the Federal Unemployment Tax Act;

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two (including
any amount paid by an employer for insurance or annuities, or
into a fund, to provide for any such payment), to, or on be-
half of, an individual in its employ or any of his dependents,
under a plan or system established by an employer which
makes provision for individuals in its employ generally (or
for such individuals and their dependents), or for a class or
classes of such individuals (or for a class or classes of such
individuals and their dependents), on account of (A) retire-
ment, or (B) sickness or accident disability, or (C) medical
or hospitalization expenses in connection with sickness or
accident disability, or (D) death;

(3) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to an indi-
vidual in its employ (including any amount paid by an em-
ployer for insurance or annuities, or into a fund, to provide
for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer on account
of sickness or accident disability, or medical or hospitalization
expenses in connection with sickness or accident disability,
to, or on behalf of, an individual in its employ after the ex-
piration of six calendar months following the last calendar
month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to, or on
behalf of, an individual in its employ or his beneficiary (A)
from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 3101 of the Federal Internal Revenue Code;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed;

(10) Vacation pay, severance pay, or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed shall not be interpreted to include (1) employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer, (2) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation, or (3) employees who are on vacation by reason of the em-
Employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner.
(2) He has made a claim for benefits in accordance with the provisions of article seven of this chapter.

(3) He is able to work and is available for full-time work for which he is fitted by prior training or experience and is doing that which a reasonably prudent person in his circumstances would do in seeking work.

(4) He has been totally unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total unemployment.

(5) He has within his base period earned wages for employment equal to not less than one thousand one hundred fifty dollars and must have earned wages in more than one quarter of his base period.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in Column (A) there is indicated the employee’s wage class, except as otherwise provided under the term “total and partial unemployment” in section three, article one of this chapter. The employee’s wage class shall be determined by his base period wages as shown in Column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of twenty-five dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.
### TABLE A

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages In Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
</tr>
<tr>
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<td>Under $700.00</td>
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<td>Ineligible</td>
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</table>

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this sec-
tion, on and after July one, one thousand nine hundred seventy,
the maximum weekly benefit rate shall be forty-five percent
of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this sec-
tion, on and after July one, one thousand nine hundred seventy-
one, the maximum weekly benefit rate shall be fifty percent
of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this
section, on and after July one, one thousand nine hundred
seventy-three, the maximum weekly benefit rate shall be fifty-
five percent of the average weekly wage in West Virginia.

The commissioner, after he has determined the maximum
weekly benefit rate upon the basis of the above formula,
shall establish as many additional wage classes as are re-
quired, increasing the amount of base period wages required
for each class by one hundred fifty dollars, the weekly
benefit rate for each class by one dollar, and the maximum
benefit by twenty-six dollars. The maximum weekly benefit
rate, when computed by the commissioner, in accordance
with the foregoing provisions, shall be rounded to the next
higher dollar amount, if the computation exceeds forty-nine
percent of a dollar amount. Such rounding off to the next
higher dollar amount shall result in one additional wage class,
with commensurate base period wage requirement of one
hundred fifty dollars over the preceding wage class, and
with a maximum benefit increase over the preceding wage
class of twenty-six dollars. Such an additional wage class
shall be published by the commissioner with the table re-
quired to be published by the foregoing provisions of this
section.

Notwithstanding any of the foregoing provisions of this
section, including Table A, on and after July one, one thousand
nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be seventy
percent of the average weekly wage in West Virginia.
(2) The weekly benefit rate (Column (C) of said Table A) in each and every wage class, one through twenty-four, both inclusive (Column (A) of said Table A), shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment (Column (D) of said Table A) in each and every wage class (Column (A) of said Table A), shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-eight times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class. Such an additional wage class shall be published by the foregoing provisions of this section.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-nine, the weekly benefit rate for each wage class by rounded dollar amount shall be fifty-five percent of one fifty-second of the median dollar amount of wages in base period for such wage class except that the weekly benefit rate for classifications one through twenty shall remain unchanged, but in any case the weekly benefit rate on or after July one, one thousand nine hundred seventy-nine, shall be in accordance with Table B below.
<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
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<td>Weekly Benefit Rate</td>
<td>Maximum Benefit in a Benefit Year</td>
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</table>

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund to be known as the employment security special administration
fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commission for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected, and (d) cover expenditures for which federal funds have been authorized but not yet received, subject to repayment to the fund. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter: Provided, That (1) not more than one hundred thousand dollars shall be expended from said fund in any fiscal year for purposes (a) and (b); and that not more than five hundred thousand dollars shall be expended from said fund in any fiscal year for purpose (d); (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.

CHAPTER 116
(S. B. 110—By Mr. Moreland and Mr. Hinkle)

[Passed February 21, 1979; in effect ninety days from passage. Approved by the Governor.]
three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one, three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eight of said chapter forty-six by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and to amend and reenact sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six, all relating to the uniform commercial code; adopting amendments thereto generally related to investment securities; relating to general definitions; issuer's duty and privilege to honor; right to reimbursement; index of definitions; issuer's lien; effect of overissue; "overissue"; certificated securities negotiable; statements and instructions not negotiable; presumptions; applicability; securities transferable; action for price; registration of pledge and release of uncertificated securities; "Issuer"; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defects or defenses; effect of issuer's restrictions on transfer; effect of unauthorized signature on certificated security or initial transaction statement; completion or alteration of certificated security or initial transaction statement; rights and duties of issuer with respect to registered owners and registered pledgees; effect of signature of authenticating trustee, registrar or transfer agent; rights acquired by purchaser; "bona fide purchaser"; "adverse claim"; title
acquired by bona fide purchaser; "broker"; notice to pur-chaser of adverse claims; staleness as notice of adverse claims; warranties on presentment and transfer of certifi-cated securities; warranties of originators of instructions; effect of delivery without indorsement; right to compel indorsement; indorsements; instructions; effect of indorse-ment without delivery; indorsement of certificated se-curity in bearer form; effect of unauthorized indorsement or instruction; effect of guaranteeing signature, indorse-ment or instruction; when transfer to the purchaser oc-curs; financial intermediary as bona fide purchaser; "financial intermediary"; duty to transfer, when completed; action against transferee based upon wrongful transfer; purchaser's right to requisites for registration of transfer, pledge or release on books; creditors' rights; no conver-sion by good faith conduct; statute of frauds; transfer or pledge within a central depository system; enforceability, attachment, perfection and termination of security inter­ests; duty of issuer to register transfer, pledge or release; assurance that indorsements and instructions are effec­tive; issuer's duty as to adverse claims; liability and nonliability for registration; lost, destroyed and stolen certificated securities; duty of authenticating trustee, transfer agent or registrar; exchangeability of securities; statements of uncertificated securities; perfection of se­curity interests in multiple state transactions and defini­tions and index of definitions relating thereto; attachment and enforceability of security interest; proceeds; formal requisites; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents, and goods covered by docu­ments; perfection by permissive filing; temporary perfec­tion without filing or transfer of possession; when posses­sion by secured party perfects security interest without filing; protection of purchasers of instruments, documents and securities; priorities among conflicting security inter­ests in the same collateral.
Be it enacted by the Legislature of West Virginia:

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

Article
5. Letters of Credit.
8. Investment Securities.

ARTICLE 1. GENERAL PROVISIONS.

PART 2. GENERAL DEFINITIONS
AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to
specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights
or security interest of a third party in the goods buys
in ordinary course from a person in the business of
selling goods of that kind but does not include a pawn-
broker. All persons who sell minerals or the like (in-
cluding oil and gas) at wellhead or minehead shall be
dee med to be persons in the business of selling goods
of that kind. “Buying” may be for cash or by exchange
of other property or on secured or unsecured credit and
includes receiving goods or documents of title under a
preexisting contract for sale but does not include a
transfer in bulk or as security for or in total or partial
satisfaction of a money debt.

(10) “Conspicuous”: A term or clause is conspicuous
when it is so written that a reasonable person against
whom it is to operate ought to have noticed it. A printed
heading in capitals (as: NONNEGOTIABLE BILL OF LADING)
is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or
color. But in a telegram any stated term is “conspicuous.” Whether a term or clause is “conspicuous” or
not is for decision by the court.

(11) “Contract” means the total legal obligation which
results from the parties’ agreement as affected by this
chapter and any other applicable rules of law. (Compare
“Agreement.”)

(12) “Creditor” includes a general creditor, a secured
creditor, a lien creditor and any representative of
creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and
an executor or administrator of an insolvent debtor’s
or assignor’s estate.

(13) “Defendant” includes a person in the position
of defendant in a cross action or counterclaim.

(14) “Delivery” with respect to instruments, docu-
ments of title, chattel paper or certificated securities
means voluntary transfer of possession.

(15) “Document of title” includes bill of lading, dock
warrant, dock receipt, warehouse receipt or order for
the delivery of goods, and also any other document which
in the regular course of business or financing is treated
as adequately evidencing that the person in possession
of it is entitled to receive, hold and dispose of the
document and the goods it covers. To be a document
of title a document must purport to be issued by or
addressed to a bailee and purport to cover goods in the
bailee's possession which are either identified or are
fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities
means goods or securities of which any unit is, by
nature or usage of trade, the equivalent of any other
like unit. Goods which are not fungible shall be deemed
fungible for the purposes of this chapter to the extent
that under a particular agreement or document unlike
units are treated as equivalents.

(18) "Genuine" means free of forgery or counter-
feiting.

(19) "Good faith" means honesty in fact in the con-
duct or transaction concerned.

(20) "Holder" means a person who is in possession of
a document of title or an instrument or a certificated
investment security drawn, issued or indorsed to him
or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or
where a credit so engages to purchase or discount a draft
complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assign-
ment for the benefit of creditors or other proceedings
intended to liquidate or rehabilitate the estate of the
person involved.

(23) A person is "insolvent" who either has ceased
to pay his debts in the ordinary course of business or
cannot pay his debts as they become due or is insolvent
within the meaning of the Federal Bankruptcy Law.
(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an
individual acting for the organization to communicate
information unless such communication is part of his
regular duties or unless he has reason to know of the
transaction and that the transaction would be materially
affected by the information.

(28) "Organization" includes a corporation, govern-
ment or governmental subdivision or agency, business
trust, estate, trust, partnership or association, two or
more persons having a joint or common interest, or any
other legal or commercial entity.

(29) "Party," as distinct from "third party," means a
person who has engaged in a transaction or made an
agreement within this chapter.

(30) "Person" includes an individual or an organiza-
tion (see section 1-102).

(31) "Presumption" or "presumed" means that the
trier of fact must find the existence of the fact presumed
unless and until evidence is introduced which would
support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount,
negotiation, mortgage, pledge, lien, issue or reissue, gift
or any other voluntary transaction creating an interest
in property.

(33) "Purchaser" means a person who takes by pur-
chase.

(34) "Remedy" means any remedial right to which
an aggrieved party is entitled with or without resort to
a tribunal.

(35) "Representative" includes an agent, an officer
of a corporation or association, and a trustee, executor
or administrator of an estate, or any other person em-
powered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal
property or fixtures which secures payment or perfor-
mance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a “security interest.” The term also includes any interest of a buyer of accounts or chattel paper, which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2-401 is not a “security interest,” but a buyer may also acquire a “security interest” by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) “Send” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) “Surety” includes guarantor.

(41) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.
(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-114. Issuer’s duty and privilege to honor; right to reimbursement.

1 (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by
reason of an additional general term that all documents
must be satisfactory to the issuer, but an issuer may
require that specified documents must be satisfactory
to it.

(2) Unless otherwise agreed when documents appear
on their face to comply with the terms of a credit but a
required document does not in fact conform to the war-
ranties made on negotiation or transfer of a document
of title (section 7-507) or of a certificated security (section
8-306) or is forged or fraudulent or there is fraud in the
transaction:

(a) the issuer must honor the draft or demand for
payment if honor is demanded by a negotiating bank or
other holder of the draft or demand which has taken the
draft or demand under the credit and under circumstances
which would make it a holder in due course (section 3-
302) and in an appropriate case would make it a person
to whom a document of title has been duly negotiated
(section 7-502) or a bona fide purchaser of a certificated
security (section 8-302); and

(b) in all other cases as against its customer, an
issuer acting in good faith may honor the draft or demand
for payment despite notification from the customer of
fraud, forgery or other defect not apparent on the face
of the documents but a court of appropriate jurisdiction
may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly
honored a draft or demand for payment is entitled to
immediate reimbursement of any payment made under
the credit and to be put in effectively available funds
not later than the day before maturity of any acceptance
made under the credit.

(4) When a credit provides for payment by the is-
suer on receipt of notice that the required documents
are in the possession of a correspondent or other agent
of the issuer

(a) any payment made on receipt of such notice is
conditional; and
(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge-back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-102. Definitions and index of definitions.
§46-8-103. Issuer’s lien.
§46-8-104. Effect of overissue; “overissue.”
§46-8-105. Certificated securities negotiable; statements and instructions not negotiable; presumptions.
§46-8-106. Applicability.
§46-8-107. Securities transferable; action for price.
§46-8-108. Registration of pledge and release of uncertificated securities.

PART 2. ISSUE—ISSUER

§46-8-201. “Issuer.”
§46-8-202. Issuer’s responsibility and defenses; notice of defect or defense.
§46-8-203. Staleness as notice of defects or defenses.
§46-8-204. Effect of issuer’s restrictions on transfer.
§46-8-205. Effect of unauthorized signature on certificated security or initial transaction statement.
§46-8-206. Completion or alteration of certificated security or initial transaction statement.
§46-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees.
§46-8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

PART 3. TRANSFER.

§46-8-301. Rights acquired by purchaser.
§46-8-302. “Bona fide purchaser”; “adverse claim”; title acquired by bona fide purchaser.
§46-8-303. “Broker.”
§46-8-304. Notice to purchaser of adverse claims.
§46-8-305. Staleness as notice of adverse claims.
§46-8-306. Warranties on presentment and transfer of certificated securities; warranties of originators of instructions.
§46-8-307. Effect of delivery without indorsement; right to compel indorsement.

§46-8-308. Indorsements; instructions.

§46-8-309. Effect of indorsement without delivery.

§46-8-310. Indorsement of certificated security in bearer form.

§46-8-311. Effect of unauthorized indorsement or instruction.

§46-8-312. Effect of guaranteeing signature, indorsement or instruction.

§46-8-313. When transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary."

§46-8-314. Duty to transfer, when completed.

§46-8-315. Action against transferee based upon wrongful transfer.

§46-8-316. Purchaser's right to requisites for registration of transfer, pledge or release on books.

§46-8-317. Creditors' rights.

§46-8-318. No conversion by good faith conduct.

§46-8-319. Statute of frauds.

§46-8-320. Transfer or pledge within central depository system.

§46-8-321. Enforceability, attachment, perfection and termination of security interests.

**PART 4. REGISTRATION.**

§46-8-401. Duty of issuer to register transfer, pledge or release.

§46-8-402. Assurance that indorsements and instructions are effective.

§46-8-403. Issuer's duty as to adverse claims.

§46-8-404. Liability and nonliability for registration.

§46-8-405. Lost, destroyed and stolen certificated securities.

§46-8-406. Duty of authenticating trustee, transfer agent or registrar.

§46-8-407. Exchangeability of securities.

§46-8-408. Statements of uncertificated securities.

§46-8-102. Definitions and index of definitions.

1 (1) In this article, unless the context otherwise requires:

3 (a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

6 (i) represented by an instrument issued in bearer or registered form;

8 (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

12 (iii) either one of a class or series or by its terms
divisible into a class or series of shares, participations, interests, or obligations.

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this article and not by article three of this chapter, even though it also meets the requirements of that article. This article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this article.

(d) A certificated security is in "registered form" if it

(i) specifies a person entitled to the security or to the rights it represents, and

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it
runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation;

(a) at least ninety percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of the corporation, and each of which is

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws,

(ii) a broker or dealer or investment company registered under the federal securities laws, or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors.

(4) A "custodian bank" is a bank or trust company which is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim." Section 8-302.

"Bona fide purchaser." Section 8-302.

"Broker." Section 8-303.
§46-8-103. Issuer's lien.

1 A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

3 (a) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

5 (b) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

§46-8-104. Effect of overissue; “overissue.”

1 (1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but if:

5 (a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or
(b) a security is not so available for purchase, the
person entitled to issue or validation may recover from
the issuer the price he or the last purchaser for value
paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess
of the amount the issuer has corporate power to issue.

§46-8-105. Certificated securities negotiable; statements and
instructions not negotiable; presumptions.

(1) Certificated securities governed by this article are
negotiable instruments.

(2) Statements (section 8-408), notices, or the like,
sent by the issuer of uncertificated securities and in-
structions (section 8-308) are neither negotiable instru-
ments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleadings, each
signature on a certificated security, in a necessary in-
dorsement, on an initial transaction statement or on an
instruction, is admitted;

(b) if the effectiveness of a signature is put in issue
the burden of establishing it is on the party claiming
under the signature but the signature is presumed to be
genuine or authorized;

(c) if signatures on a certificated security are admitted
or established production of the security entitles a holder
to recover on it unless the defendant establishes a de-
fense or a defect going to the validity of the security;

(d) if signatures on an initial transaction statement
are admitted or established, the facts stated in the state-
ment are presumed to be true as of the time of its
issuance; and

(e) after it is shown that a defense or defect exists
the plaintiff has the burden of establishing that he or
some person under whom he claims is a person against
whom the defense or defect is ineffective (section 8-202).
§46-8-106. Applicability.

1 The law (including the conflict of laws rules) of the
2 jurisdiction of organization of the issuer governs the
3 validity of a security, the effectiveness of registration
4 by the issuer, and the rights and duties of the issuer
5 with respect to:
6
(a) registration of transfer of a certificated security;
7
(b) registration of transfer, pledge, or release of an
8 uncertificated security; and
9
(c) sending of statements of uncertificated securities.

§46-8-107. Securities transferable; action for price.

1 (1) Unless otherwise agreed and subject to any ap-
2 plicable law or regulation respecting short sales, a person
3 obligated to transfer securities may transfer any certifi-
4 cated security of the specified issue in bearer form or
5 registered in the name of the transferee, or indorsed
6 to him or in blank, or he may transfer an equivalent
7 uncertificated security to the transferee or a person
8 designated by the transferee.
9
(2) If the buyer fails to pay the price as it comes
10 due under a contract of sale the seller may recover the
11 price of:
12
(a) certificated securities accepted by the buyer;
13
(b) uncertificated securities that have been trans-
14 ferred to the buyer or a person designated by the buyer;
15 and
16
(c) other securities if efforts at their resale would
17 be unduly burdensome or if there is no readily available
18 market for their resale.

§46-8-108. Registration of pledge and release of uncertificated
securities.

1 A security interest in an uncertificated security may
2 be evidenced by the registration of pledge to the secured
3 party or a person designated by him. There may be no
4 more than one registered pledge of an uncertificated
security at any time. The registered owner of an un-
certificated security is the person in whose name the
security is registered, even if the security is subject to a
registered pledge. The rights of a registered pledgee of
an uncertificated security under this article are ter-
minated by the registration of release.

PART 2. ISSUE—ISSUER.

§46-8-201. “Issuer.”

1 (1) With respect to obligations on or defenses to a
security “issuer” includes a person who:

(a) places or authorizes the placing of his name on a
certificated security (otherwise than as authenticating
trustee, registrar, transfer agent or the like) to evidence
that it represents a share, participation or other interest
in his property or in an enterprise, or to evidence his duty
to perform an obligation represented by the certificated
security;

(b) creates shares, participations or other interests
in his property or in an enterprise or undertakes obliga-
tions, which shares, participations, interests, or obliga-
tions are uncertificated securities;

(c) directly or indirectly creates fractional interests
in his rights or property which fractional interests are
represented by certificated securities; or

(d) becomes responsible for or in place of any other
person described as an issuer in this section.

(2) With respect to obligations on or defenses to a
security, a guarantor is an issuer to the extent of his
guaranty, whether or not his obligation is noted on a
certificated security or on statements of uncertificated
securities sent pursuant to section 8-408.

(3) With respect to registration of transfer, pledge
or release (part 4 of this article) “issuer” means a person
on whose behalf transfer books are maintained.

§46-8-202. Issuer’s responsibility and defenses; notice of de-
fekt or defense.

1 (1) Even against a purchaser for value and without
notice, the terms of a security include:
(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.
(3) Except as provided in the case of certain unauthorized signatures (section 8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

§46-8-203. Staleness as notice of defects or defenses.

1 (1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) the act or event is one requiring the payment of money, the delivery of certificated securities, the registration or transfer of uncertificated securities or any of these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and he takes the security more than one year after that date; and

(b) the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

(2) A call that has been revoked is not within subsection (1).
§46-8-204. Effect of issuer's restrictions on transfer.

1 A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

   (a) the security is certificated and the restriction is noted conspicuously thereon; or

   (b) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

§46-8-205. Effect of unauthorized signature on certificated security or initial transaction statement.

1 An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

   (a) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

   (b) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

§46-8-206. Completion or alteration of certificated security or initial transaction statement.

1 (1) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

§46-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees.

(1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.
(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgees; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4) (b) or by registration of release and pledge under subsection (4) (c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.
(7) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

§46-8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

(1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect that:

(a) the certificated security or initial transaction statement is genuine;

(b) his own participation in the issue or registration of the transfer, pledge or release of the security is within his capacity and within the scope of the authority received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

PART 3. TRANSFER.

§46-8-301. Rights acquired by purchaser.

(1) Upon transfer of a security to a purchaser (section 8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by section 8-302 (4).

(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The crea-
§46-8-302. “Bona fide purchaser”; “adverse claim”; title acquired by bona fide purchaser.

1. (1) A “bona fide purchaser” is a purchaser for value in good faith and without notice of any adverse claim:

2. (a) who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to him or in blank;

3. (b) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or

4. (c) to whom a security is transferred under the provisions of paragraph (c), (d), (i) or (g) of section 8-313 (1).

5. (2) “Adverse claim” includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

6. (3) A bona fide purchaser in addition to acquiring the rights of a purchaser (section 8-301) also acquires his interest in the security free of any adverse claim.

7. (4) Notwithstanding section 8-301 (1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.

§46-8-303. “Broker.”

1. “Broker” means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.
§46-8-304. Notice to purchaser of adverse claims.

1 (1) A purchaser (including the broker for the seller or buyer but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

   (a) the security, whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

   (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

2 (2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under section 8-403 (4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

3 (3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

§46-8-305. Staleness as notice of adverse claims.

1 An act or event that creates a right to immediate
performance of the principal obligation represented by
a certificated security or sets a date on or after which
a certificated security is to be presented or surrendered
for redemption or exchange does not itself consti-
tute any notice of adverse claims except in the case
of a transfer:

(a) after one year from any date set for presentment
or surrender for redemption or exchange; or

(b) after six months from any date set for payment
of money against presentation or surrender of the
security if funds are available for payment on that
date.

§46-8-306. Warranties on presentment and transfer of certifi-
cated securities; warranties of originators of in-
structions.

(1) A person who presents a certificated security for
registration of transfer or for payment or exchange
warrants to the issuer that he is entitled to the regis-
tration, payment or exchange. But a purchaser for
value and without notice of adverse claims who re-
ceives a new, reissued or reregistered certificated se-
curity on registration of transfer or receives an initial
transaction statement confirming the registration of
transfer of an equivalent uncertificated security to him
warrants only that he has no knowledge of any unau-
thorized signature (section 8-311) in a necessary in-
dorsement.

(2) A person by transferring a certificated security
to a purchaser for value warrants only that:

(a) his transfer is effective and rightful;

(b) the security is genuine and has not been materi-
ally altered; and

(c) he knows of no fact which might impair the
validity of the security.

(3) If a certificated security is delivered by an in-
termediary known to be entrusted with delivery of the
security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who rede­livers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an inter­mediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the in­struction; and

(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (sub­section 8-312 (3)) that:

(a) he is an appropriate person to originate the in­struction; and

(b) at the time the instruction is presented to the issuer

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (section 8-312 (6)) that:

(a) he is an appropriate person to originate the in­struction;
(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c) (ii) and (c) (iii) of subsection (7).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) his transfer is effective and rightful; and

(b) the uncertificated security is valid.

(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in
§46-8-307. Effect of delivery without indorsement; right to compel indorsement.

1 If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

§46-8-308. Indorsements; instructions.

(1) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) An indorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or
(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means the person specified by the certificated security or by special indorsement to be entitled to the security.

(7) "An appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), "an appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(b) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian or like fiduciary;

(d) if the persons designated are described as more than one person as tenants by the entirety or with right
59 of survivorship and by reason of death all cannot sign, 
60 the survivor or survivors; 
61 (e) a person having power to sign under applicable 
62 law or controlling instrument; and 
63 (f) to the extent that the person designated or any 
64 of the foregoing persons may act through an agent, his 
65 authorized agent.
66 (9) Unless otherwise agreed, the indorser of a certi-
67 ficated security by his indorsement or the originator of 
68 an instruction by his origination assumes no obligation 
69 that the security will be honored by the issuer but only 
70 the obligations provided in section 8-306.
71 (10) Whether the person signing is appropriate is 
72 determined as of the date of signing and an indorsement 
73 made by or an instruction originated by him does not 
74 become unauthorized for the purposes of this article by 
75 virtue of any subsequent change of circumstances.
76 (11) Failure of a fiduciary to comply with a controlling 
77 instrument or with the law of the state having jurisdic-
78 tion of the fiduciary relationship, including any law 
79 requiring the fiduciary to obtain court approval of the 
80 transfer, pledge or release, does not render his indorse-
81 ment or an instruction originated by him unauthorized 
82 for the purposes of this article.

§46-8-309. Effect of indorsement without delivery.

1 An indorsement of a certificated security, whether 
2 special or in blank, does not constitute a transfer until 
3 delivery of the certificated security on which it appears 
4 or, if the indorsement is on a separate document, until 
5 delivery of both the documents and the certificated 
6 security.

§46-8-310. Indorsement of certificated security in bearer form.

1 An indorsement of a certificated security in bearer 
2 form may give notice of adverse claims (section 8-304) 
3 but does not otherwise affect any right to registration the 
4 holder possesses.
§46-8-311. Effect of unauthorized indorsement or instruction.

1. Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(a) he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(b) an issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (section 8-404).

§46-8-312. Effect of guaranteeing signature, indorsement or instruction.

1. (1) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to indorse (section 8-308); and

(c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction (section 8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the
registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no war-
nancy;

c) the signer had legal capacity to sign; and
d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or
registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the
signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warrant-
ties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to
the issuer:

a) the person specified in the instruction as the regis-
tered owner or registered pledgee of the uncertificated
security will be the registered owner or registered pledg-
ee; and

b) the transfer, pledge, or release of the uncertificated
security requested in the instruction will be registered by
the issuer free from all liens, security interests, restric-
tions, and claims other than those specified in the in-
struction.

(4) The guarantor under subsections (1) and (2) or
the special guarantor under subsection (3) does not
otherwise warrant the rightfulness of the particular
transfer, pledge, or release.

(5) Any person guaranteeing an indorsement of a
certificated security makes not only the warranties of a
signature guarantor under subsection (1) but also war-
rants the rightfulness of the particular transfer in all
respects.

(6) Any person guaranteeing an instruction requesting
the transfer, pledge, or release of an uncertificated secur-
ity makes not only the warranties of a special signature
guarantor under subsection (3) but also warrants the
rightfulness of the particular transfer, pledge, or release
in all respects.

(7) No issuer may require a special guarantee of sig-
nature (subsection (3)), a guarantee of indorsement
(subsection (5)), or a guarantee of instruction (subsection
(6)) as a condition to registration of transfer, pledge, or
release.

(8) The foregoing warranties are made to any person
taking or dealing with the security in reliance on the
guarantee, and the guarantor is liable to the person for
any loss resulting from breach of the warranties.

§46-8-313. When transfer to purchaser occurs; financial inter-
mediary as bona fide purchaser; "financial inter-
mediary."

1 (1) Transfer of a security or a limited interest (in-
cluding a security interest) therein to a purchaser occurs
only:

4 (a) at the time he or a person designated by him
acquires possession of a certificated security;

6 (b) at the time the transfer, pledge, or release of an
uncertificated security is registered to him or a person
designated by him;

9 (c) at the time his financial intermediary acquires
possession of a certificated security specially indorsed
to or issued in the name of the purchaser;

12 (d) at the time a financial intermediary, not a clearing
 corporation, sends him confirmation of the purchase and
also by book entry or otherwise identifies as belonging
to the purchaser

16 (i) a specific certificated security in the financial
intermediary’s possession;

18 (ii) a quantity of securities that constitute or are
part of a fungible bulk of certificated securities in the
financial intermediary’s possession or of uncertificated
securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under section 8-320;

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who
is the registered pledgee of the security, if it is un-
certificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest
where the transferor has signed a security agreement
containing a description of the security, at the time new
value is given by the secured party; or

(j) with respect to the transfer of a security interest
where the secured party is a financial intermediary and
the security has already been transferred to the financial
intermediary under paragraph (a), (b), (c), (d) or
(g), at the time the transferor has signed a security
agreement containing a description of the security and
value is given by the secured party.

(2) The purchaser is the owner of a security held for
him by a financial intermediary, but cannot be a bona
fide purchaser of a security so held except in the circum-
stances specified in paragraphs (c), (d), (i) and (g) of
subsection (1). If a security so held is part of a fungible
bulk, as in the circumstances specified in paragraphs
(d) (ii) and (d) (iii) of subsection (1), the purchaser
is the owner of a proportionate property interest in the
fungible bulk.

(3) Notice of an adverse claim received by the finan-
cial intermediary or by the purchaser after the financial
intermediary takes delivery of a certificated security as
a holder for value or after the transfer, pledge, or release
of an uncertificated security has been registered free
of the claim to a financial intermediary who has given
value is not effective either as to the financial intermedi-
ary or as to the purchaser. However, as between the
financial intermediary and the purchaser, the purchaser
may demand transfer of an equivalent security as to
which no notice of adverse claim has been received.

(4) A “financial intermediary” is a bank, broker,
clearing corporation or other person (or the nominee of
any of them) which in the ordinary course of its business
maintains security accounts for its customers and is
acting in that capacity. A financial intermediary may
have a security interest in securities held in account for
its customer.

§46-8-314. Duty to transfer, when completed.

1 (1) Unless otherwise agreed, if a sale of a security is
2 made on an exchange or otherwise through brokers:
3 (a) the selling customer fulfills his duty to transfer
4 at the time he:
5 (i) places a certificated security in the possession of
6 the selling broker or of a person designated by the
7 broker;
8 (ii) causes an uncertificated security to be registered
9 in the name of the selling broker or a person designated
10 by the broker;
11 (iii) if requested, causes an acknowledgment to be
12 made to the selling broker that a certificated or uncerti-
13 ficated security is held for the broker; or
14 (iv) places in the possession of the selling broker or
15 of a person designated by the broker a transfer instruc-
16 tion for an uncertificated security, providing the issuer
17 does not refuse to register the requested transfer if the
18 instruction is presented to the issuer for registration
19 within thirty days thereafter; and
20 (b) the selling broker, including a correspondent
21 broker acting for a selling customer, fulfills his duty to
22 transfer at the time he:
23 (i) places a certificated security in the possession of
24 the buying broker or a person designated by the buying
25 broker;
26 (ii) causes an uncertificated security to be registered
27 in the name of the buying broker or a person designated
28 by the buying broker;
29 (iii) places in the possession of the buying broker or
30 of a person designated by the buying broker a transfer
31 instruction for an uncertificated security, providing the
32 issuer does not refuse to register the requested transfer
if the instruction is presented to the issuer for registration within thirty days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he:

(a) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within subsection (2) and not within subsection (1).

§46-8-315. Action against transferee based upon wrongful transfer.

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser may:

(a) reclaim possession of the certificated security wrongfully transferred;

(b) obtain possession of any new certificated security representing all or part of the same rights;

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.
14  (2) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 8-311).

22  (3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation.

§46-8-316. Purchaser's right to requisites for registration of transfer, pledge or release on books.

1  Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge or release or with any other requisite necessary to obtain registration of the transfer, pledge or release of the security; but if the transfer, pledge or release is not for value, a transferor, pledgor or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge or release.

§46-8-317. Creditors' rights.

1  (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.
(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process.

§46-8-318. No conversion by good faith conduct.

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received certificated securities and sold, pledged or delivered them or has sold or caused the
transfer or pledge of uncertificated securities over which
he had control according to the instructions of his prin-
cipal, is not liable for conversion or for participation in
breach of fiduciary duty although the principal had no
right so to deal with the securities.

§46-8-319. Statute of frauds.

A contract for the sale of securities is not enforceable
by way of action or defense unless:

(a) there is some writing signed by the party against
whom enforcement is sought or by his authorized agent
or broker sufficient to indicate that a contract has been
made for sale of a stated quantity of described securities
at a defined or stated price;

(b) delivery of a certificated security or transfer in-
struction has been accepted, or transfer of an uncertifi-
cated security has been registered and the transferee has
failed to send written objection to the issuer within ten
days after receipt of the initial transaction statement
confirming the registration, or payment has been made,
but the contract is enforceable under this provision only
to the extent of the delivery, registration or payment;

(c) within a reasonable time a writing in confirma-
tion of the sale or purchase and sufficient against the
sender under paragraph (a) has been received by the
party against whom enforcement is sought and he has
failed to send written objection to its contents within
ten days after its receipt; or

(d) the party against whom enforcement is sought
admits in his pleading, testimony or otherwise in court
that a contract was made for the sale of a stated quantity
of described securities at a defined or stated price.

§46-8-320. Transfer or pledge within central depository sys-
tem.

(1) In addition to other methods, a transfer, pledge
or release of a security or any interest therein may be
effected by the making of appropriate entries on the
books of a clearing corporation reducing the account of
the transferor, pledgor or pledgee and increasing the
account of the transferee, pledgee or pledgor by the
amount of the obligation, or the number of shares or
rights transferred, pledged or released, if the security is
shown on the account of a transferor, pledgor or pledgee
on the books of the clearing corporation; is subject to
the control of the clearing corporation; and

(a) if certificated,

(i) is in the custody of the clearing corporation, an-
other clearing corporation, a custodian bank or a nominee
of any of them; and

(ii) is in bearer form or indorsed in blank by an
appropriate person or registered in the name of the
clearing corporation, a custodian bank, or a nominee of
any of them; or

(b) if uncertificated, is registered in the name of the
clearing corporation, another clearing corporation, a
custodian bank, or a nominee of any of them.

(2) Under this section entries may be made with re-
spect to like securities or interests therein as a part of a
fungible bulk and may refer merely to a quantity of a
particular security without reference to the name of the
registered owner, certificate or bond number or the like
and, in appropriate cases, may be on a net basis taking
into account other transfers, pledges or releases of the
same security.

(3) A transfer under this section is effective (sec-
tion 8-313) and the purchaser acquires the rights of
the transferor (section 8-301). A pledge or release
under this section is the transfer of a limited interest. If
a pledge or the creation of a security interest is intended,
the security interest is perfected at the time when both
value is given by the pledgee and the appropriate entries
are made (section 8-321). A transferee or pledgee under
this section may be a bona fide purchaser (section 8-302).
(4) A transfer or pledge under this section is not a registration of transfer under part 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

§46-8-321. Enforceability, attachment, perfection and termination of security interests.

(1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of section 8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under paragraph (i) of section 8-313(1) becomes unperfected after twenty-one days unless, within that time, the requirements for transfer under any other provision of section 8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of article nine of this chapter, but:

(a) no filing is required to perfect the security interest; and

(b) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in paragraph (h), (i), or (j) of section 8-313(1).

The secured party has the rights and duties provided under section 9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of section
8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after twenty-one days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of section 8-313(1).

PART 4. REGISTRATION.

§46-8-401. Duty of issuer to register transfer, pledge or release.

1 (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge or release as requested if:

2 (a) the security is indorsed or the instruction was originated by the appropriate person or persons (section 8-308);

3 (b) reasonable assurance is given that those indorsements or instructions are genuine and effective (section 8-402);

4 (c) the issuer has no duty as to adverse claims or has discharged the duty (section 8-403);

5 (d) any applicable law relating to the collection of taxes has been complied with; and

6 (e) the transfer, pledge or release is in fact rightful or is to a bona fide purchaser.

7 (2) If an issuer is under a duty to register a transfer, pledge or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge or release.
§46-8-402. Asssurance that indorsements and instructions are effective.

1 (1) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (section 8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (section 8-312(1) or (2)) of the person indorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) if the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer, pledge or release; or
(b) in any other case, a copy of a document showing
the appointment or a certificate issued by or on behalf
of a person reasonably believed by the issuer to be
responsible or, in the absence of that document or cer-
tificate, other evidence reasonably deemed by the issuer
to be appropriate. The issuer may adopt standards with
respect to the evidence if they are not manifestly un-
reasonable. The issuer is not charged with notice of
the contents of any document obtained pursuant to this
paragraph (b) except to the extent that the contents
relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable as-
surance beyond that specified in this section, but if it
does so and, for a purpose other than that specified in
subsection 3 (b), both requires and obtains a copy of a
will, trust, indenture, articles of copartnership, bylaws
or other controlling instrument, it is charged with notice
of all matters contained therein affecting the transfer,
pledge or release.

§46-8-403. Issuer’s duty as to adverse claims.

(1) An issuer to whom a certificated security is
presented for registration shall inquire into adverse
claims if:

(a) a written notification of an adverse claim is
received at a time and in a manner affording the issuer
a reasonable opportunity to act on it prior to the issu-
ance of a new, reissued or reregistered certificated
security, and the notification identifies the claimant, the
registered owner, and the issue of which the security
is a part, and provides an address for communications
directed to the claimant; or

(b) the issuer is charged with notice of an adverse
claim from a controlling instrument which it has elected
to require under section 8-402 (4).

(2) The issuer may discharge any duty of inquiry
by any reasonable means, including notifying an ad-
verse claimant by registered or certified mail at the
address furnished by him or if there be no such address
at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under section 8-402 (4) or receives notification of an adverse claim under subsection (1), if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the con-
tents of any court record or file or other recorded or
unrecorded document even though the document is in
its possession and even though the transfer is made on
the indorsement of a fiduciary to the fiduciary himself
or to his nominee.

(4) An issuer is under no duty as to adverse claims
with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction,
or other legal process served upon the issuer if
the process was served at a time and in a manner afford­
ing the issuer a reasonable opportunity to act on it
in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written
notification from the registered owner or the registered
pledgee if the notification was received at a time and
in a manner affording the issuer a reasonable oppor­
tunity to act on it in accordance with the requirements
of subsection (5);

(c) claims (including restrictions on transfer not im­
posed by the issuer) to which the registration of transfer
to the present registered owner was subject and
were so noted in the initial transaction statement
sent to him; and

(d) claims as to which an issuer is charged with
notice from a controlling instrument it has elected to
require under section 8-402 (4).

(5) If the issuer of an uncertificated security is under
a duty as to an adverse claim, he discharges that duty
by:

(a) including a notation of the claim in any state­
ments sent with respect to the security under sections
8-408 (3), (6), and (7); and

(b) refusing to register the transfer or pledge of the
security unless the nature of the claim does not preclude
transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is reg-
istered subject to an adverse claim, a notation of the
claim must be included in the initial transaction state-
ment and all subsequent statements sent to the trans-
ferre and pledgee under section 8-408.

(7) Notwithstanding subsections (4) and (5), if an
uncertificated security was subject to a registered pledge
at the time the issuer first came under a duty as to a
particular adverse claim, the issuer has no duty as to
that claim if transfer of the security is requested by
the registered pledgee or an appropriate person acting
for the registered pledgee unless:

(a) the claim was embodied in legal process which
expressly provides otherwise;

(b) the claim was asserted in a written notification
from the registered pledgee;

(c) the claim was one as to which the issuer was
charged with notice from a controlling instrument it
required under section 8-402 (4) in connection with the
pledgee's request for transfer; or

(d) the transfer requested is to the registered owner.

§46-8-404. Liability and nonliability for registration.

(1) Except as provided in any law relating to the
collection of taxes, the issuer is not liable to the owner,
pledgee or any other person suffering loss as a result of
the registration of a transfer, pledge or release of a
security if:

(a) there were on or with a certificated security the
necessary indorsements or the issuer had received an
instruction originated by an appropriate person (section
8-308); and

(b) the issuer had no duty as to adverse claims or has
discharged the duty (section 8-403).

(2) If an issuer has registered a transfer of a certifi-
cated security to a person not entitled to it, the issuer on
demand shall deliver a like security to the true owner
unless:
(a) the registration was pursuant to subsection (1);  
(b) the owner is precluded from asserting any claim  
for registering the transfer under section 8-405 (1); or  
(c) the delivery would result in overissue, in which  
case the issuer's liability is governed by section 8-104.

(3) If an issuer has improperly registered a transfer,  
pledge or release of an uncertificated security, the issuer  
on demand from the injured party shall restore the  
records as to the injured party to the condition that  
would have obtained if the improper registration had  
not been made unless:

(a) the registration was pursuant to subsection (1); or  
(b) the registration would result in overissue, in which  
case the issuer's liability is governed by section 8-104.

§46-8-405. Lost, destroyed and stolen certificated securities.

(1) If a certificated security has been lost, apparently  
destroyed or wrongfully taken, and the owner fails to  
notify the issuer of that fact within a reasonable time  
after he has notice of it and the issuer registers a transfer  
of the security before receiving notification, the owner  
is precluded from asserting against the issuer any claim  
for registering the transfer under section 8-404 or any  
claim to a new security under this section.

(2) If the owner of a certificated security claims  
that the security has been lost, destroyed or wrongfully  
taken, the issuer shall issue a new certificated security  
or, at the option of the issuer, an equivalent uncertificated  
security in place of the original security if the owner:

(a) so requests before the issuer has notice that the  
security has been acquired by a bona fide purchaser;  
(b) files with the issuer a sufficient indemnity bond;  
and  
(c) satisfies any other reasonable requirements im-  
posed by the issuer.

(3) If, after the issue of a new certificated or uncer-
tificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

§46-8-406. Duty of authenticating trustee, transfer agent or registrar.

1 (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges and releases of its uncertificated securities, in the issue of new securities or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) with regard to the particular functions he performs, he has the same obligations to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent.

§46-8-407. Exchangeability of securities.

1 (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.
(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (section 8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403 (4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

§46-8-408. Statements of uncertificated securities.

(1) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;
(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the transfer was registered.

(2) Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;
(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to:

(a) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1);

(b) the registered pledgee pursuant to subsection (2); or

(c) the registered owner pursuant to subsection (3).

Each initial transaction statement shall be signed by or on behalf of the issuer and shall be identified as "initial transaction statement".

(5) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;
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(b) the name and address and any taxpayer identification number of the registered owner;

c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or
pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-105. Definitions and index of definitions.
§46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.
§46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
§46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
§46-9-305. When possession by secured party perfects security interest without filing.
§46-9-309. Protection of purchasers of instruments, documents and securities.
§46-9-312. Priorities among conflicting security interests in the same collateral.


1 (1) Documents, instruments and ordinary goods.

2 (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

7 (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.
(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this article to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction ma-
chinery and commercial harvesting machinery and the
like, if the goods are equipment or are inventory leased
or held for lease by the debtor to others, and are not
covered by a certificate of title described in subsection
(2).

(b) The law (including the conflict of laws rules) of
the jurisdiction in which the debtor is located governs
the perfection and the effect of perfection or nonperfec-
ton of the security interest.

(c) If, however, the debtor is located in a jurisdiction
which is not a part of the United States, and which does
not provide for perfection of the security interest by
filing or recording in that jurisdiction, the law of the
jurisdiction in the United States in which the debtor
has its major executive office in the United States
governs the perfection and the effect of perfection or
nonperfection of the security interest through filing. In
the alternative, if the debtor is located in a jurisdiction
which is not a part of the United States or Canada and
the collateral is accounts or general intangibles for
money due or to become due, the security interest may
be perfected by notification to the account debtor. As
used in this paragraph, "United States" includes its
territories and possessions and the Commonwealth of
Puerto Rico.

(d) A debtor shall be deemed located at his place of
business if he has one, at his chief executive office if he
has more than one place of business, otherwise at his
residence. If, however, the debtor is a foreign air carrier
under the Federal Aviation Act of 1958, as amended, it
shall be deemed located at the designated office of the
agent upon whom service of process may be made on
behalf of the foreign air carrier.

(e) A security interest perfected under the law of
the jurisdiction of the location of the debtor is perfected
until the expiration of four months after a change of the
debtor's location to another jurisdiction, or until perfec-
tion would have ceased by the law of the first jurisdic-
tion, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

§46-9-105. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or
other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of article 1 (section 1-201), and a receipt of the kind described in subsection (2) of section 7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are moveable at the time the security interest attaches or which are fixtures (section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or
contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 3-104), or a certificated security (defined in section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the section in which they appear are:

"Account." Section 9-106.

"Attach." Section 9-203.
§46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.

(1) Subject to the provisions of section 4-208 on the security interest of a collecting bank, section 8-321 on security interests in securities and section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party, pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and
(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 9-306.

(4) A transaction may be subject to this article and also to article 7A of chapter 47 relating to small loans and in case of conflict between the provisions of this article and said article 7A or any other such statute, the provisions of said article 7A or such other statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

§46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under section 9-304 or in proceeds for a 10-day period under section 9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent’s estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same
assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (section 4-208) or in securities (section 8-321) or arising under the article on sales (see section 9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or

(b) the following statute of this state: Chapter seventeen-a of this code; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided...
in section 9-103 on multiple state transactions. Duration
and renewal of perfection of a security interest per-
fected by compliance with the statute or treaty are
governed by the provisions of the statute or treaty; in
other respects the security interest is subject to this
article.

§46-9-304. Perfection of security interest in instruments,
documents, and goods covered by documents;
perfection by permissive filing; temporary per­
fection without filing or transfer of possession.

1 (1) A security interest in chattel paper or negotiable
documents may be perfected by filing. A security in­
terest in money or instruments (other than certificated
securities or instruments which constitute part of chattel
paper) can be perfected only by the secured party’s
taking possession, except as provided in subsections (4)
and (5) of this section and subsections (2) and (3) of
section 9-306 on proceeds.

2 (2) During the period that goods are in the possession
of the issuer of a negotiable document therefor, a se­
curity interest in the goods is perfected by perfecting a
security interest in the document, and any security
interest in the goods otherwise perfected during such
period is subject thereto.

3 (3) A security interest in goods in the possession of
a bailee other than one who has issued a negotiable
document therefor is perfected by issuance of a docu­
ment in the name of the secured party or by the bailee’s
receipt of notification of the secured party’s interest or
by filing as to the goods.

4 (4) A security interest in instruments (other than
certificated securities) or negotiable documents is per­
fected without filing or the taking of possession for a
period of 21 days from the time it attaches to the extent
that it arises for new value given under a written se­
curity agreement.

5 (5) A security interest remains perfected for a period
of 21 days without filing where a secured party having
a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of section 9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.

§46-9-305. When possession by secured party perfects security interest without filing.

A security interest in letters of credit and advices of credit (subsection (2) (a) of section 5-116), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party’s taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party’s interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

§46-9-309. Protection of purchasers of instruments, documents and securities.

Nothing in this article limits the rights of a holder
in due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 7-501) or a bona fide purchaser of a security (section 8-302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

§46-9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 9-103 on security interests related to other jurisdictions; section 9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement
covering the same types of inventory (i) before the date 
of the filing made by the purchase money secured party, 
or (ii) before the beginning of the 21-day period 
where the purchase money security interest is temporarily 
perfected without filing or possession (subsection (5) of 
section 9-304); and

(c) the holder of the conflicting security interest 
receives the notification within five years before the 
debtor receives possession of the inventory; and

(d) the notification states that the person giving the 
notice has or expects to acquire a purchase money secur-
ity interest in inventory of the debtor, describing such 
inventory by item or type.

(4) A purchase money security interest in collateral 
other than inventory has priority over a conflicting se-
curity interest in the same collateral or its proceeds if 
the purchase money security interest is perfected at the 
time the debtor receives possession of the collateral or 
within ten days thereafter.

(5) In all cases not governed by other rules stated in 
this section (including cases of purchase money security 
interests which do not qualify for the special priorities 
set forth in subsections (3) and (4) of this section), 
priority between conflicting security interests in the same 
collateral shall be determined according to the following 
rules:

(a) Conflicting security interests rank according to 
priority in time of filing or perfection. Priority dates 
from the time a filing is first made covering the collateral 
or the time the security interest is first perfected, whichever 
ever is earlier, provided that there is no period thereafter 
when there is neither filing nor perfection.

(b) So long as conflicting security interests are un-
perfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing 
or perfection as to collateral is also a date of filing or 
perfection as to proceeds.
If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

CHAPTER 117
(5. B .551—By Mr. Harman)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three, relating to the establishment of a veterans' cemetery by the department of veterans affairs; establishment of a national cemetery or expansion of an existing national cemetery.

Be it enacted by the Legislature of West Virginia:

That chapter nine-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 three, to read as follows:

ARTICLE 3. STATE CEMETERY FOR VETERANS.

§9A-3-1. Department empowered to establish and maintain cemetery.

§9A-3-2. Department to promulgate rules and regulations and make facilities available.

§9A-3-1. Department empowered to establish and maintain cemetery.

1 The department of veterans affairs is hereby em-2 powered to establish and maintain a state veterans'
cemetery which shall be centrally located within the state and easily accessible. Interment in the state veterans' cemetery shall be available to all persons who are residents and citizens of the state and who have served in the armed forces of the United States, including the army, air force, navy, marine corps and coast guard, and who have a discharge other than dishonorable.

Further, the department of veterans affairs is hereby granted authority to acquire and transfer real property to the United States veterans administration contingent upon the utilization of such real property by that federal agency for the establishment of a new national cemetery or for the expansion of an existing national cemetery.

For the purposes set forth in this article the department of veterans affairs is hereby authorized to receive funds by gift, grant, appropriation or by any other means from any source available or to become available.

§9A-3-2. Department to promulgate rules and regulations and make facilities available.

The department shall promulgate rules and regulations not inconsistent herewith for the administration of the veterans' cemetery and shall make available to all persons eligible for the benefit thereof the facilities at such cemetery upon request.

CHAPTER 118
(S. B. 202—By Mr. Jones)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and nineteen, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the filing of a birth certificate in the district where the birth occurs and in the district where the mother resides; and requiring the filing of a death
certificate in the district where the death occurs and in the district where the deceased resided.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally.
§16-5-19. Death registration.

§16-5-12. Birth registration generally.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section. When a birth occurs in a moving conveyance, a birth certificate shall be filed in the district in which the child is first removed from the conveyance. When a birth occurs in a district other than where the mother resides, a birth certificate shall be filed in the district in which the child is born and in the district in which the mother resides.

(b) When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required for the certificate and file it with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required for the certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person,
(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person,

(3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(e) If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father unless a determination of paternity has been made by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(f) Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven days prescribed above.

(g) In order that each county may have a complete record of the births occurring in said county, the local registrar shall transmit each month to the county clerk of his county the copies of the certificates of all births occurring in said county, from which copies the clerk shall compile a record of such births and shall enter the same in a systematic and orderly way in a well-bound register of births, which said register shall be a public record: Provided, That such copies and register shall not state that any child was either legitimate or illegitimate. The form of said register of births shall be prescribed by the state registrar of vital statistics.

§16-5-19. Death registration.

(a) A death certificate for each death which occurs in
this state shall be filed with the local registrar of the
registration district in which the death occurs within
three days after such death, and prior to removal of the
body from the state, and shall be registered by such
registrar if it has been completed and filed in accordance
with this section: Provided, That

(1) If the place of death is unknown, a death certifi-
cate shall be filed in the registration district in which a
dead body is found within three days after the finding;

(2) If death occurs in a moving conveyance, a death
certificate shall be filed in the registration district in
which the dead body is first removed from such con-
veyance; and

(3) If the death occurs in a district other than where
the deceased resided, a death certificate shall be filed in
the registration district in which the death occurred and
in the district in which the deceased resided.

(b) The funeral director or person acting for him who
first assumes custody of a dead body shall file the death
certificate. He shall obtain the necessary personal data
from the next of kin or the best qualified person or source
available. He shall obtain the medical certification of
the cause of death from the person responsible for making
such certification.

(c) The medical certification shall be completed and
signed within twenty-four hours after death by the
physician in charge of the patient's care for the illness
or condition which results in death except when inquiry
is required pursuant to chapter sixty-one, article twelve
or other applicable provision of this code.

(d) When death occurs without medical attendance
and inquiry is not required pursuant to chapter sixty-one,
article twelve or other applicable provisions of this code,
the local health officer shall investigate the cause of
death and complete and sign the medical certification
within twenty-four hours after receiving notice of the
death.
(e) When death occurs in a manner subject to investigation, the coroner or other officer or official charged with the legal duty of making such investigation shall investigate the cause of death and shall complete and sign the medical certification within twenty-four hours after making determination of the cause of death.

(f) In order that each county may have a complete record of the deaths occurring in said county, the local registrar shall transmit each month to the county clerk of his county a copy of the certificates of all deaths occurring in said county, and if any person shall die in a county other than that county within the state in which such person last resided prior to death, then the state registrar shall, if possible, also furnish a copy of such death certificate to the clerk of the county commission of the county wherein such person last resided, from which copies the clerk shall compile a record of such deaths and shall enter the same in a systematic and orderly way in a well-bound register of deaths for that county, which such register shall be a public record. The form of said death register shall be prescribed by the state registrar of vital statistics.

CHAPTER 119
(S. B. 99—By Mr. Huffman)

[Passed March 10, 1979; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two; to amend and reenact section nineteen, article three, chapter twelve of said code; and to amend and reenact section three, article five, chapter twenty-one of said code, all relating to the direct deposit of certain governmental employees' compensation into designated accounts in financial institutions; prohibiting general
orders for payrolls; providing certain exceptions with respect to such prohibition; and relating to payment of wages by employers other than railroads and to assignments of wages.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 twenty-two; that section nineteen, article three, chapter twelve of said code be amended and reenacted; and that section three, article five, chapter twenty-one of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-22. Direct deposit of county officials’ and employees’ compensation into designated accounts in financial institutions.

1 Notwithstanding any other provision of this article, a county commission, board of education, or governing body of a municipal corporation may, upon the written request of any of their respective employees, deposit that employee’s compensation directly into a demand or time account in a bank, credit union or savings and loan institution. The written request shall specifically identify the employee, the financial institution, the type of account and the account number.
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-19. General order by county commission, board of education or governing body of a municipal corporation prohibited.

1 It shall be unlawful for any county commission, board of education or the governing body of a municipal corporation, or other body charged with the administration of the fiscal affairs of any county, school district, independent school district or municipality, to issue any general order for a payroll, or to any person to be disbursed or distributed by him to those who have performed the services or furnished the materials for which payment is to be made, but in all such cases the order shall be made payable to the persons lawfully entitled to such payment: Provided, That a county commission, board of education or governing body of a municipal corporation may, upon the written request of any of their respective employees, issue a general order for a payroll to a bank, credit union or savings and loan institution for deposit to that employee's demand or time account. The written request shall specifically identify the employee, the financial institution, the type of account and the account number.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least once in every two weeks, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services in lawful money of the United States, or by the cash order as described and required in the next succeeding section of this article or by any method of depositing immediately available funds in an
employee’s demand or time account in a bank, credit
union or savings and loan institution that may be agreed
upon in writing between the employee and such person,
firm or corporation, which agreement shall specifically
identify the employee, the financial institution, the type
of account and the account number: Provided, That
nothing herein contained shall be construed in a manner
to require any person, firm or corporation to pay em-
ployees by depositing funds in a financial institution:
Provided, however, That if, at any time of payment, any
employee shall be absent from his regular place of labor
and shall not receive his wages through a duly authorized
representative, he shall be entitled to such payment at
any time thereafter upon demand upon the proper pay-
master at the place where such wages are usually paid
and where the next pay is due.

Nothing herein contained shall affect the right of an
employee to assign part of his claim against his employer
except as hereinafter provided.

No assignment of or order for future wages shall be
valid for a period exceeding one year from the date of
such assignment or order. Such assignment or order shall
be acknowledged by the party making the same before
a notary public or other officer authorized to take
acknowledgments, and such order or assignment shall
specify thereon the total amount due and collectible by
virtue of the same and three fourths of the periodical
earnings or wages of the assignor shall at all times be
exempt from such assignment or order and no assignment
or order shall be valid which does not so state upon its
face: Provided, That no such order or assignment
shall be valid unless the written acceptance of the em-
ployer of the assignor to the making thereof, is endorsed
thereon: Provided, however, That nothing herein contained
shall be construed as affecting the right of employer and
employees to agree between themselves as to deductions
to be made from the payroll of employees: Provided
further, That nothing herein contained shall be construed
as affecting the right of teachers who have elected to
become members of a county teachers’ retirement system,
as permitted by section two, article seven-a, chapter thirty-six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-one, to make assignments of or orders for future wages to such systems for periods coextensive with the term of their contracts of employment.

CHAPTER 120
(Com. Sub. for S. B. 539—By Mr. Palumbo and Mr. Gilligan)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the governor's commission on Willow Island; continuing the existence of such commission; making certain legislative findings; declaring purposes and intent with respect to said commission; providing for the composition of the commission and the appointment of members; permitting certain members of the Legislature to serve on said commission; establishing the powers and duties of the commission; authorizing the commission to examine witnesses; empowering the commission to administer oaths and to issue subpoenas and subpoenas duces tecum; outlining the duties of the circuit courts with respect to the enforcement of said subpoenas or subpoenas duces tecum; providing for the employment of legal, technical, investigative and other personnel to assist the commission; providing for the compensation and expenses of the members of the commission and the method of payment; permitting the commission to hold executive sessions in certain cases; granting immunity to members of the commission in certain instances; providing that certain findings, reports and evidence shall be privileged; providing for reports to be made by the commission; and relating to the interpretation of the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand
ARTICLE 20. THE GOVERNOR'S COMMISSION ON WILLOW ISLAND.

§5-20-1. Legislative findings, purposes and intent.

The Legislature hereby finds and declares:

(a) That on the twenty-seventh day of April, one thousand nine hundred seventy-eight, at Willow Island, Pleasants County, West Virginia, a cooling tower then under construction collapsed, resulting in the loss of a great many lives;

(b) That every effort should be made to prevent the repetition of any similar tragic occurrence or incident in the future and, toward that end, it is proper and desirable that a complete, detailed and thorough investigation into the reasons for and causes of the collapse of such cooling tower be made; which investigation should be independent of and free from any litigation which has been or may be instituted with respect to such collapse;

(c) That toward this end, the governor, by executive order No. 15-78, dated the sixth day of October, one thousand nine hundred seventy-eight, created and established the governor's commission on Willow Island, comprised of nine members, consisting of and generally representative of the public and of various interests, bodies, groups and organizations as specified in subsection (b) of this section;

(d) That in furtherance of the intent and purposes of the aforesaid executive order it is the intent of the Legis-
lature to continue the governor's commission on Willow Island and to expand upon its powers, duties and responsibilities in order to facilitate its investigative purposes and assure the orderly execution of its functions and duties;

(e) That it recognizes that the provisions of section 1, article V of the constitution of West Virginia prohibit any person from exercising the powers of more than one branch or department of government at the same time; however, it is the express purpose, intent and finding of the Legislature that those members of the commission who are members of the Legislature are acting as members of Legislature while serving on the commission and in the furtherance of the Legislature's inherent right and power to investigate and inquire into and report on those matters which are legitimately within its powers, and that since the commission's role and duties are investigative and reportive in nature, the service upon the commission by its legislative members and the service of its chairman are not violative of nor inimical to the constitutional mandate with respect to the separation of governmental powers.

§5-20-2. Governor's commission on Willow Island continued; composition; appointment of members. 

The governor's commission on Willow Island, herein-after denominated "commission," heretofore created and existing under the authority of an executive order dated the sixth day of October, one thousand nine hundred seventy-eight, is hereby continued. The commission shall continue to consist of nine members appointed by the governor as follows: One shall be the commissioner of labor, who shall serve as chairman of the commission; two shall be members of the West Virginia Legislature, one from the Senate and one from the House of Delegates; two shall be representatives of and shall be nominated by an organization composed of and representing the interests of the surviving members of the families of those persons killed at the Willow Island cooling tower collapse; two shall be representatives of organized labor;
one shall be representative of the business community;
and one shall be representative of the general public.
Those persons previously appointed who are members
of the commission upon the effective date of this article
shall continue as members of the commission and shall
remain members of the commission until their resigna-
tion, death or removal by the governor, in which case
or event the governor shall appoint a new member from
or representative of the same group or interests as the
former member.
1 The commission has the power, duty and responsibility:
   (a) To conduct a comprehensive and detailed investi-
gation into the collapse of the cooling tower at Willow
Island, to evaluate the facts and circumstances surround-
ing such collapse and, if possible, to determine the cause
or causes of such collapse;
   (b) To analyze and evaluate the findings and reports
of the occupational health and safety administration with
respect to the collapse of the cooling tower at Willow
Island and to report to the governor and the Legislature
with respect thereto;
   (c) To administer oaths, to examine witnesses, to com-
pel the attendance of witnesses to appear before the com-
mission and to compel the production of such books,
records, documents or other papers or tangible things
as the commission may require to conduct its investi-
gation, and to this end the commission is hereby given
authority to issue subpoenas or subpoenas duces tecum.
Any subpoena or subpoena duces tecum issued on behalf
of the commission shall be over the signature of the
chairman. If any person subpoenaed to appear before
the commission or before any committee or subcommittee
thereof refuses to appear or to answer inquiries pro-
pounded to such person, or fails or refuses to produce any
book, record, document or other paper or tangible thing
within his control when the same are demanded, the com-
mission or its chairman shall report the fact of such failure
or refusal to the circuit court of Kanawha County or
29 any other court of competent jurisdiction and such court
30 shall compel obedience to the subpoena or subpoena duces
31 tecum as though the subpoena or subpoena duces tecum
32 had been issued by such court in the first instance;
33 (d) To employ such legal, technical, investigative,
34 clerical, stenographic, advisory and other personnel as it
35 deems necessary and needful and to fix the reasonable
36 compensation of such persons as may be so employed;
37 (e) To perform every other act necessary or desirable
38 to carry out any of the other powers, duties or responsi-
39 bilities enumerated in this section.

§5-20-4. Compensation and expenses of members; expenses of
the commission.

1 Except for those members of the commission who are
2 members of the Legislature, the members of the com-
3 mission shall be reimbursed for all of their reasonable
4 and necessary travel and other expenses incurred in
5 connection with carrying out their duties as members
6 of the commission, which expenses shall be paid in the
7 manner and form prescribed by law or by any rule or
8 regulation and which expenses shall be paid from the
9 governor's civil contingency fund upon approval of the
10 governor. Members of the commission who are also
11 members of the Legislature shall be reimbursed for any
12 such expenses from the appropriation under “Account
13 No. 103 for Joint Expenses,” upon approval of the joint
14 committee on government and finance.
15 Other expenses of the commission, including any fees,
16 salaries, wages and other expenses, shall be paid from
17 the appropriations made to the governor's civil contin-
18 gency fund, upon approval of the governor.
19 Members of the commission may receive no other com-
20 pensation for their services on or with the commission.

§5-20-5. Executive sessions authorized; demand to be heard
in open hearing.

1 Notwithstanding any provisions of article nine-a, chap-
2 ter six of the code to the contrary, the commission shall
have the power and authority to hold executive sessions
for the purpose of establishing policy or an agenda and
for the purpose of interrogating any witness or witnesses.
If a witness desires to testify or be interrogated in a public
or open hearing, such witness shall have the right to
demand the same and shall not be heard otherwise.
Conversely, if a witness desires to testify or be heard in
executive session, he shall notify the commission of his
desire and shall assign reasons therefor and the commis-
sion may, after consideration of the reasons assigned for
such request, grant the same. If such request is refused,
such refusal shall not constitute grounds for the refusal
to testify. The commission may permit members of the
staff of the commission to attend and be present during
any executive session of the commission, whether for
the taking of evidence or otherwise.

§5-20-6. Immunity granted to commission members.

No member of the commission may be held liable,
either civilly or criminally, for delivering an opinion,
uttering a speech, or for statements made in debate during
any meeting of the commission or of any committee or
subcommittee thereof, nor for the contents of any report,
document or other writing prepared by the commission or
by any committee or subcommittee thereof, nor shall any
member be subpoenaed to testify or questioned before
or by any other tribunal or court with respect to any
such opinion, utterance, speech, statement or report or
as to any finding or findings of the commission.

§5-20-7. Privilege granted to commission findings, reports and
evidence.

None of the findings, reports, testimony, statements or
other evidence of whatsoever nature adduced by, belong-
ing to or made by the commission may be used as evidence
in any court or other tribunal for any purpose whatso-
ever, nor shall the same be subject to any subpoena or
subpoena duces tecum issued by any court or other
tribunal.
§5-20-8. Reports of the commission; termination of commission.

1 The commission shall submit any report or reports as to its findings and conclusions, along with any recommendations which it deems appropriate, to the Legislature and the governor on or before July one, one thousand nine hundred eighty, after which date it shall cease its existence.

§5-20-9. Interpretation of section.

1 The provisions of this article shall be in addition to and not in derogation of the purposes of the commission as set forth in the aforesaid executive order No. 15-76, and none of the provisions of this section may be construed so as to limit the primary purpose of the commission as set forth in said executive order.

CHAPTER 121
(Com. Sub. for H. B. 947—By Mr. Wiedebusch and Mr. Greer)

[Passed March 7, 1979: in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen; to amend and reenact sections one-c, one-d, seven-a and nine, article four; and section one, article four-a, all of said chapter, all relating to creating a workmen’s compensation advisory board; providing for its membership and members’ terms, appointment and duties; providing a method of calling meetings and requiring annual report; payment of temporary total disability benefits; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made; method and time of payments for permanent disability; monitoring of injury claims; legislative findings; review of medical evidence; independent medical evaluations; temporary total disability benefits; mandatory
action; additional authority; physical and vocational rehabilita-
tion; payments for medical expenses on physician’s request;
disabled workmen’s relief fund; and payment of permanent
total disability benefits at thirty-three and one-third percent
of average weekly wage.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-three of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, be amend-
ed by adding thereto a new section, designated section eighteen; that
sections one-c, one-d, seven-a and nine, article four; and section
one, article four-a, all of said chapter, be amended and reenacted
to read as follows:

Article

   4. Disability and Death Benefits.
   4A. Disabled Workmen’s Relief Fund.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-18. Workmen’s compensation advisory board created; mem-
bership; appointment; terms; meetings; duties; annual
reports.

1 There is hereby created an advisory board to the commis-
2 sioner of the workmen’s compensation fund to be known as
3 “the workmen’s compensation advisory board.”

4 The workmen’s compensation advisory board consists of
5 ten members. The workmen’s compensation commissioner is
6 an ex officio member of the board whose term as such member
7 continues for that period in which he holds that office. The
8 other nine members of the board shall be appointed by the
9 governor with three members representing employees subject
10 to this chapter, three members representing employers subject
11 to this chapter and three members representing providers of
12 medical services to such employees for which such providers
13 are compensated under the provisions of this chapter. The
14 term of each member except the workmen’s compensation
15 commissioner shall be three years: Provided, That of the per-
16 sons originally appointed, three members, including one mem-
17 ber of each of the three representative groups, shall be desig-
nated to serve for terms of one year each, three members, in-
cluding one member of each of the three representative groups,
shall be designated to serve for terms of two years each and
three members, including one member of each of the three
representative groups, shall be designated to serve for a term
of three years each. The terms of all the initially appointed
members of the board shall begin on the first day of July, one
thousand nine hundred seventy-nine. Upon the expiration of
each of such initial appointments the term of each new ap-
pointee shall be three years, but any person appointed to fill a
vacancy occurring prior to the expiration of the term for which
his predecessor was appointed shall be appointed only for the
remainder of such term. Each member shall serve until the
appointment and qualification of his successor. Members shall
be eligible for reappointment.

The workmen's compensation commissioner shall serve as
chairman of the board. The other nine members shall select
one of their number to serve as vice chairman of the board and
to preside in the absence of the commissioner. Meetings may
be held at any time at the call of the commissioner. The com-
missioner shall call a meeting whenever a majority of the
other members of the board request him to do so. At least one
meeting shall be held annually.

The purpose of the board and the duty of its members are to
advise the workmen's compensation commissioner on matters
pertinent to the administration of the workmen's compensa-
tion fund. The board shall consider any matter brought before
it by the commissioner or any appointed member and may
consider any matter referred to it by a person not a member
of the board. At the conclusion of its consideration of any
proposal the board shall make its recommendation to the
commissioner. The commissioner is not bound by any recom-
mandation of the board. The board also may formulate general
or long-range plans for improvements in the administration of
the fund for the consideration of the commissioner.

By the second Wednesday of January of each year the
board shall prepare and deliver to the workmen's compen-
sation commissioner and to the Legislature a report of all the
matters it considered, recommendations it made and plans it
formulated during the preceding calendar year. The report shall include any recommendations it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

Unless sooner terminated by law and until and unless extended, the West Virginia workmen’s compensation advisory board shall cease to exist on the thirtieth day of June, one thousand nine hundred eighty-two.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; independent medical evaluations; temporary total disability benefits; mandatory action; additional authority.

§23-4-9. Physical and vocational rehabilitation.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

Upon a finding by the commissioner that a claimant has sustained a compensable injury within the meaning of section one of this article, as may clearly appear from the employer’s report of injury, or otherwise, that disability will last longer than three days as provided in section five of this article, the commissioner may immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and payment of the expenses provided for in subdivision (a), section three of this article, relating to said injury, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the mean-
ING of section one of this article, and may commence pay-
mament of temporary total disability benefits as provided herein
immediately upon receipt of the employer's report of injury
when the employer's report clearly indicates a compensable
injury that will last longer than three days and shall commence
such payment within fifteen days upon receipt of the em-
ployee's or employer's report of injury, whichever is received
sooner, and receipt of either a proper physician's report or
any other information necessary for a determination.

Upon receipt of the first report of injury in a claim, the
commissioner shall request from the employer or employers
any wage information necessary for determining the rate of
benefits to which the employee is entitled. If an employer
does not furnish the commissioner with this information within
fifteen days from the date the commissioner received the
first report of injury in the case, the employee shall be paid
temporary total disability benefits for lost time at the rate
the commissioner believes would be justified by the usual rate
of pay for the occupation of the injured employee. The
commissioner shall adjust the rate of benefits both retroactively
and prospectively upon receipt of proper wage information.
The commissioner shall have access to all wage information in
the possession of any state agency, including wage information
received by the department of employment security under
chapter twenty-one-a of this code, pertinent to such determi-
nation.

Upon a finding of the commissioner that a claimant, who
has sustained a previous compensable injury which has been
closed by an award of temporary total disability or permanent
partial disability, suffers further temporary total disability
or requires further medical or hospital treatment resulting
from the compensable injury giving rise to the former award,
the commissioner shall immediately commence payment of
temporary total disability benefits to the claimant in the
amounts provided for in sections six and fourteen of this
article, and the expenses provided for in subdivision (a),
section three of this article, relating to said disability, with-
out waiting for the expiration of the thirty-day period during
which objections may be filed to such findings as provided
in section one, article five of this chapter. The commissioner
shall give immediate notice to the employer of his findings and
of the commencement of such payment.

Where the employer is a subscriber to the workmen’s
compensation fund under the provisions of article three of
this chapter, and upon the findings aforesaid, the commissioner
shall mail all workmen’s compensation checks paying tem-
porary total disability benefits directly to the claimant and not
to the employer for delivery to the claimant.

Where the employer has elected to carry his own risk
under section nine, article two of this chapter, and upon
the findings aforesaid, the commissioner shall immediately
issue a pay order directing the employer to pay such amounts
as are due the claimant for temporary total disability bene-
fits. A copy of the order shall be sent to the claimant. The
self-insured employer shall commence such payments by mail-
ing or delivering the payments directly to the employee within
ten days of the date of the receipt of the pay order by the
employer. If the self-insured employer believes that his em-
ployee is entitled to benefits, he may start payments before
receiving a pay order from the commissioner.

In the event that an employer files a timely objection to
any finding or order of the commissioner, as provided in
section one, article five of this chapter, with respect to
the payment or continued payment of temporary total disability
benefits and those expenses as outlined in subdivision (a),
section three of this article, as provided herein, the com-
missioner shall continue to pay to the claimant such benefits
and expenses during the period of such disability unless it is
subsequently found by the commissioner that the claimant
was not entitled to receive the temporary total disability
benefits and the expenses provided for in subdivision (a),
section three of this article, or any part thereof, so paid,
in which event the commissioner shall, where the employer is
a subscriber to the fund, credit said employer’s account
with the amount of the overpayment; and, where the employer
has elected to carry his own risk, the commissioner shall
refund to such employer the amount of the overpayment. The
amounts so credited to a subscriber or repaid to a self-insurer
shall be charged by the commissioner to the surplus fund
created by section one, article three of this chapter. If the
final decision in any case determines that a claimant was
not lawfully entitled to benefits paid to him pursuant to a
prior decision, such amount of benefits so paid shall be
demed overpaid. The commissioner may recover such amount
by civil action or in any manner provided in this code for
the collection of past-due payment and shall withhold, in
whole or in part, as determined by the commissioner, any
future benefits payable to the individual and credit such
amount against the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent disability.

(a) If the commissioner makes an award for permanent
partial or permanent total disability, the commissioner or
self-insured employer shall start payment of benefits by
mailing or delivering the amount due directly to the em-
ployee within fifteen days from the date of the award.

(b) If a timely protest to the award is filed, as pro-
vided in section one of article five, the commissioner or
self-insured employer shall continue to pay to the claimant
such benefits during the period of such disability unless it
is subsequently found by the commissioner that the claimant
was not entitled to receive the benefits, or any part thereof,
so paid, in which event the commissioner shall, where the
employer is a subscriber to the fund, credit said employer's
account with the amount of the overpayment; and, where
the employer has elected to carry his own risk, the com-
missioner shall refund to such employer the amount of the
overpayment. The amounts so credited to a subscriber or
repaid to a self-insurer shall be charged by the commis-
sioner to the surplus fund created by section one, article
three of this chapter. If the final decision in any case deter-
mines that a claimant was not lawfully entitled to benefits
paid to him pursuant to a prior decision, such amount of
benefits so paid shall be deemed overpaid. The commis-
sioner may recover such amount by civil action or in any
manner provided in this code for the collection of past-
due payment and shall withhold, in whole or in part, as
determined by the commissioner, any future benefits payable
§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; independent medical evaluations; temporary total disability benefits; mandatory action; additional authority.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of temporary total disability benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives, it is essential that the commissioner establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commissioner, in consultation with medical experts, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability so established for the injury involved shall be reviewed by the commissioner. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commissioner shall mark the claim file accordingly and shall diary such claim file as to the next date for required review which shall not exceed sixty days. If the commissioner concludes that the claimant might benefit by an independent medical evaluation, he shall proceed as specified in subsection (c) of this section.

(c) When the commissioner concludes that an independent medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, he shall refer the claimant to a physician or physicians of his selection for examination and evaluation. If the physician or physicians so selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and his then treating physician and the recommended treatment may be authorized by the commissioner. If the physician or physicians
so selected conclude that the claimant has reached his maximum degree of improvement and that the claimant has no permanent partial disability or that it is too early to evaluate the claimant as to permanent partial disability, temporary total disability benefits shall cease as of the date of receipt by the commissioner of the report or reports of such physician or physicians and the same rule shall govern and control in any claim in which the treating physician shall advise the commissioner that the claimant has reached his maximum degree of improvement or that he is ready for disability evaluation: Provided, That if the examining physician or physicians conclude that the claimant has reached his maximum degree of improvement and has permanent partial disability, the temporary total disability benefits shall continue for thirty days or until an order is entered granting to the claimant a permanent partial disability award, whichever shall first occur: Provided, however, That under no circumstances shall a claimant be entitled to receive temporary total disability benefits beyond the date he is released to return to work.

(d) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability shall continue longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commissioner under other provisions of this chapter), the commissioner shall refer the claimant to a physician or physicians of his selection for examination and evaluation in accordance with the provisions of subsection (c) of this section and all of the other provisions of such subsection (c) shall be fully applicable: Provided further, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection (d) shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(e) The provisions of this section are in addition to and in no way in derogation of the power and authority
vested in the commissioner by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of its selection and at its expense, or vested in the claimant or employer to file a protest, under other provisions of this chapter.

§23-4-9. Physical and vocational rehabilitation.

In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes: Provided, That such expenditure for vocational rehabilitation shall not exceed ten thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such vocational rehabilitation purposes as provided by this section unless authorized by the commissioner prior to the rendering of such physical or vocational rehabilitation except, that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of such treatment.

In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he is receiving any vocational rehabilitation or rehabilitative treatment that renders him totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

For the relief of persons who are receiving benefits pursuant
to a permanent total disability award in amounts less than
thirty-three and one-third percent of the average weekly wage
for the state of West Virginia per month, and for the relief of
widows who are receiving benefits on account of the death
of an employee in amounts less than thirty-three and one-
third percent of the average weekly wage in the state of West
Virginia per month, and for the relief of children of em-
ployees deceased before one thousand nine hundred sixty-
seven, who are under the age of twenty-three and who are
full-time students, and for the relief of other persons who
are receiving dependents' benefits on account of the death
of an employee in amounts less than the specific monetary
amounts set forth in section ten, article four of this chapter
and in effect as of July one, one thousand nine hundred
seventy-three, there is hereby created a separate fund to
be known as the “Disabled Workmen's Relief Fund,” which
fund shall consist of such sums as are from time to time
made available to carry out the objects and purposes of this
article. Said fund shall be in the custody of the state treasurer
and disbursements therefrom shall be made upon requisition
signed by the commissioner to those persons entitled to
participate therein and in such amounts to each participant
as is provided in section three of this article.

CHAPTER 122
(H. B. 939—By Mr. Martin, 35th District, and Mr. Caudle)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT authorizing the Jefferson County board of education to
convey title to a parcel of board owned land to Shepherdstown Day Care, Inc., at a fair market value to be determined by
the board and requiring any deed of conveyance to contain a
contingent remainder interest in such real estate to vest in any
person, corporation or agency of instrumentality of the United
States, if the Shepherdstown Day Care, Inc., ceases or fails to
use such real estate for day-care purpose or ceases to be a non-profit corporation.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY BOARD OF EDUCATION.

§1. Authorization to convey board owned land to Shepherdstown Day Care, Inc.

The Legislature hereby recognizes that adequate day care facilities are necessary for the citizens of Jefferson County who have young children and must seek employment outside of the home to support their children. Accordingly, the Legislature hereby finds and declares that transfers of any property, real or personal made by county boards of education to any person, organization or corporation for the furtherance of such activities promote the economic and educational welfare of the public and, therefore, is a public purpose.

Notwithstanding the provisions of section seven, article five, chapter eighteen of the official code of the state of West Virginia, the board of education of Jefferson County is hereby authorized and empowered to negotiate terms in accordance with the provisions of this section and to sell to Shepherdstown Day Care, Inc., the real estate and all appurtenances thereto described as the East Side School Building, on East German Street Extended, near the corporation of Shepherdstown, Shepherdstown District, Jefferson County, West Virginia.

The consideration for such conveyance shall be a fair market value as determined by the Jefferson County board of education.

The instrument of conveyance shall contain a provision requiring a contingent remainder interest in such real estate to vest in any person, corporation or agency or instrumentality of the United States if Shepherdstown Day Care, Inc., ceases or fails to use such real estate for day care purposes or ceases to be a nonprofit corporation.
RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 8
(By Mr. Farley and Mr. Swann)

[Adopted February 7, 1979]

Amending Joint Rules of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates be amended by adding thereto a new rule designated Joint Rule No. 29.

29. Prior to consideration of any bill relating to public pensions or retirement by the Senate or the House of Delegates or by any committee thereof, such bill shall be reviewed by the Legislative Commission on Pensions and Retirement, who shall meet and consider such bills and, within a reasonable time after submission, report to the standing committee to which the bill was referred its recommendations relating to such bill: Provided, That failure of the Legislative Commission on Pensions and Retirement to make such report shall not preclude consideration or action on any such bill.

HOUSE CONCURRENT RESOLUTION NO. 9
(By Mr. Bryan, Mr. Hendricks, Mr. Starcher, Mr. Teets, Mr. Goodwin and Mr. Blackwell)

[Adopted January 31, 1979]

Expressing concern about the regulatory program of the Federal Office of Surface Mining Reclamation and Control under the Surface Mining Control and Reclamation Act of 1977 which applies to both surface and underground mines.

WHEREAS, The State of West Virginia has for many years administered an environmentally sound and workable mining reclamation program specifically designed to address the reclamation problems associated with the terrain, climate and other physical conditions associated with mining in West Virginia; and

WHEREAS, The Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, passed by the Congress of the United
States on August 3, 1977, created the Office of Surface Mining Reclamation and Enforcement in the United States Department of the Interior and authorized the promulgation of rules and regulations by said Office to implement Public Law 95-87; and

WHEREAS, Section 101(f) of the Surface Mining Control and Reclamation Act of 1977 provides that "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States"; and

WHEREAS, On December 13, 1977, the Office of Surface Mining Reclamation and Enforcement issued rules and regulations applicable to the surface and underground mining operations in all the States until each State has a federally approved regulatory program; and

WHEREAS, On September 18, 1978, the Office of Surface Mining Reclamation and Enforcement proposed rules and regulations to implement a nationwide permanent program for the regulation of surface and underground mining operations; and

WHEREAS, The issuance of the December 13, 1977, regulations causes, and the issuance of regulations such as those proposed on September 18, 1978, will cause, great disruption in the West Virginia mining reclamation program; and

WHEREAS, Said rules and regulations cause unnecessary economic hardship in the West Virginia coal industry and the State's overall economy; and

WHEREAS, Said rules and regulations unnecessarily add to the inflation pressures in the nation's economy as testified to by the Council of Economic Advisors to the President of the United States, the President's Council on Wage and Price Stability and other recognized governmental panels; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia protests and deplores the conditions caused by the rules and regulations of the Office of Surface Mining Reclamation and Enforcement promulgated and proposed under Public Law 95-87 and hereby petitions the Congress of the United States to more carefully oversee the adminis-
tration of Public Law 95-87, to reconsider this approach and requirements for state plans to implement the program, and to investigate the backgrounds and philosophies and professional competency of the staff at the highest level of the Office of Surface Mining Reclamation and Enforcement; and, be it

Further Resolved, That the Legislature of the State of West Virginia encourage the West Virginia Department of Natural Resources to resist unwarranted federal interference in the West Virginia mining reclamation program and to take all steps necessary to assure the West Virginia mining reclamation program remains oriented toward the legitimate environmental concerns of the State of West Virginia, regardless of the requirements of the national rules and regulations developed by the Office of Surface Mining Reclamation and Enforcement which may address problems of other coal producing regions of the nation; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the President of the United States and to the Senators and members of the House of Representatives representing the State of West Virginia in the Congress.

HOUSE CONCURRENT RESOLUTION NO. 35
(By Mr. Brenda and Mrs. Richards)
[Adopted March 8, 1979]

Requesting the Congress of the United States to mandate that the United States Customs Service, the United States Department of the Treasury and the International Trade Commission take all necessary steps to ensure the enforcement of existing federal statutes and regulations prohibiting dumping of foreign steel products in the United States.

WHEREAS, The selling of foreign steel products in the United States at prices substantially below their fair market value in this country is creating severe hardship upon the steel industry in West Virginia due to decreased demand for its products; and

WHEREAS, Weirton Steel Company provides employment for 14,500 West Virginia citizens and Connors Steel Company employs 900 West Virginians, and decreased demand for steel products
manufactured in West Virginia will necessitate layoffs of many of these employees and other steelworkers, causing severe economic and personal hardship; and

WHEREAS, There is ample federal statutory and administrative regulatory authority which, if strictly enforced, would prevent the practice by foreign enterprises known as “dumping”; and it is in the best interests of the citizens of West Virginia that such laws and regulations be expeditiously implemented and strictly enforced; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to mandate that the United States Customs Service, the United States Department of the Treasury and the International Trade Commission take immediate action to implement and strictly enforce existing federal statutes and regulations to prevent the dumping of foreign steel products in the United States; and, be it

Further Resolved, That copies of this request be sent to the Clerk of the United States House of Representatives; the Secretary of the United States Senate and to each member of the West Virginia Congressional Delegation.

HOUSE CONCURRENT RESOLUTION NO. 47

(By Mr. Speaker, Mr. See, and Mr. Teets)

[Adopted March 9, 1979]

Directing the continuation of certain studies by the Joint Committee On Government and Finance.

WHEREAS, Certain studies referred to the Joint Committee on Government and Finance by prior sessions of the Legislature and studies initiated by the Joint Committee in 1978 have not been completed and require additional study; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance continue the studies authorized by the following concurrent resolutions:

1. Senate Concurrent Resolution No. 12, regular session, 1973,
CONCURRENT RESOLUTIONS

and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to coal mining.

2. House Concurrent Resolution No. 34, regular session, 1972, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to criminal laws.


4. Senate Concurrent Resolution No. 11, regular session, 1976, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to employee classification, salary and benefits.

5. Senate Concurrent Resolution No. 24, regular session, 1975, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to health and social services.

6. House Concurrent Resolution No. 3, first extraordinary session, 1977, and continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to higher education.

7. Senate Concurrent Resolution No. 19, regular session, 1973, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to the park system and including the study of Department of Natural Resources recreational facilities.

8. House Concurrent Resolution No. 31, regular session, 1969, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to the tax structure of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance continue the following studies initiated by the Joint Committee in 1978:


2. Public education study commission, authorized April 9, 1978, by the Joint Committee on Government and Finance.

3. Workmen’s compensation, authorized April 9, 1978, by the Joint Committee on Government and Finance; and, be it
Further Resolved, That all reports, together with findings, conclusions, recommendations and any proposed drafts of legislation, be made to the Legislature at its regular session, 1980; and, be it

Further Resolved, That all provisions of said concurrent resolutions be continued in force except as modified herein but that the Joint Committee on Government and Finance be authorized to restructure said studies to comply with the provisions of general law enacted by the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 51
(By Mr. Speaker, Mr. See, and Mr. Teets)

[Adopted March 9, 1979]

Directing the Joint Committee on Government and Finance to make certain studies of programs and problems and report its recommendations with respect thereto to the Legislature.

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make studies of programs and problems as follows:

1. The coordination and quality of services rendered to the blind through the various state agencies and the feasibility and advantages of establishing a West Virginia Commission on the Blind for the consolidation of those services;

2. General reformation of the law of torts, including negligence liability, malpractice liability and product liability, with consideration of government insurance or reinsurance programs and other liability protections, liability limits, punitive damages, attorneys’ contingent fee arrangements, statutes of limitations on court actions, improvement of production standards and quality of consumer goods and the need for comparative negligence provisions in the law;

3. A monitoring of the initiation and implementation of organizational and procedural changes within the Public Service Commission, a review of studies the Commission conducts at the direction of
the Legislature or the federal government and an evaluation of any legislation recommended by the Commission;

4. A review of the general administration, field operations and personnel and employee practices within the Department of Natural Resources;

5. The desirability of abolishing the state sale of alcoholic beverages, adoption of a system of private sale of these beverages and abolishing the Office of West Virginia Nonintoxicating Beer Commissioner;

6. The need for nursing homes throughout the State and the best means for fulfilling this need;

7. The proliferation of governmental professional licensing boards and the costs of their operation; the degree to which these boards are dominated by the members of the regulated professions; the validity of licensing requirements with respect to the skills and abilities required in the practice of the regulated profession; the economic effect of professional licensing and the costs to the public; and the role of these boards in protecting the public from fraud, abuse and incompetence;

8. The administration, facilities and programs of the Department of Highways and the laws governing the Department; operations and efficiency of the various highway districts; needs to expedite and improve highway maintenance, repair and improvements; effects of using salt or other chemical products on roads and bridges during the winter months; and problems of implementation by the Department of the conditions set forth by the Institute for Certification of Engineering Technicians; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1980, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct the studies herein authorized, to prepare reports and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

WHEREAS, ON JANUARY 31, 1979, THE UNITED STATES DEPARTMENT OF TRANSPORTATION REPORTED ITS FINAL RECOMMENDATIONS FOR A RESTRUCTURED INTERCITY RAIL PASSENGER SYSTEM TO BE OPERATED BY THE NATIONAL RAILROAD PASSENGER CORPORATION; AND

WHEREAS, SUCH RECOMMENDATIONS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION WILL BECOME LAW ON OR ABOUT MAY 15, 1979, UNLESS THE UNITED STATES SENATE OR HOUSE OF REPRESENTATIVES ACTS AFFIRMATIVELY TO CANCEL THE PROPOSED RECOMMENDATIONS; AND

WHEREAS, THE PROPOSED RAIL PASSENGER SYSTEM WOULD PROVIDE A MINIMAL LEVEL OF NATIONAL INTERCONNECTED SERVICE PLUS AN ADDITIONAL GROUP OF SERVICES CONNECTING MAJOR REGIONS OF THE COUNTRY AND PROVIDING SERVICE TO MAJOR POPULATION CENTERS; AND

WHEREAS, THIS PROPOSAL WOULD ELIMINATE TWELVE THOUSAND MILES OF THE PRESENT TWENTY-SEVEN THOUSAND MILE SYSTEM, REDUCING THE SYSTEM BY FORTY-THREE PERCENT, WHILE REDUCING THE FUNDING OF THE SYSTEM BY ONLY EIGHT PERCENT; AND

WHEREAS, THE RECOMMENDATION, IF IMPLEMENTED, WOULD RESULT IN THE LOSS OF EMPLOYMENT FOR APPROXIMATELY FIVE THOUSAND AMTRAK EMPLOYEES; AND

WHEREAS, UNDER THE RECOMMENDED SYSTEM, THE PASSENGER TRAIN
Shenandoah, which runs from Washington, D. C. to Cincinnati would be rerouted through Pittsburgh, the passenger train Cardinal, which runs from Washington, D. C. to Chicago would be discontinued, and the passenger train Hilltopper, which runs from Washington, D. C. through Petersburg, Virginia to the Tri-State Station in Kentucky would be discontinued, all of which would eliminate passenger rail service entirely from the State of West Virginia except for the weekend operation of the passenger train Blue Ridge, which would carry tourists from Washington, D. C. to Harper's Ferry, West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia expresses its most serious reservations regarding the wisdom of the recommendations and strongly oppose implementation of the proposed restructured intercity rail passenger system; and, be it

Further Resolved, That the Legislature of West Virginia advises the United States Department of Transportation that the citizens of this great State are likewise citizens of these United States, and as such are entitled to the beneficial services of the Federal government and its Department of Transportation, as are other citizens of this Union; and, be it

Further Resolved, That the Legislature of West Virginia requests and urges the Governor of the State of West Virginia, members of the United States Congress representing the State of West Virginia, the National Railroad Passenger Corporation and all other interested parties to exercise due diligence and their good offices to cause the United States Department of Transportation to cease implementation of its improvident decision, eliminating passenger rail service in the State of West Virginia; and, be it

Further Resolved, That copies of this request be sent to the Governor of the State of West Virginia, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, each member of the West Virginia Congressional Delegation and to the President of Amtrak.
URGING the United States Environmental Protection Agency to take prompt action under Section 125 of the Clean Air Act to fully protect the rights of West Virginia coal producers to sell their coal to utility customers in Ohio.

WHEREAS, The United States Environmental Protection Agency (EPA) has instituted proceedings under 42 U.S.C. §7425, Section 125 of the Clean Air Act; and

WHEREAS, The producers of Ohio coal have asked EPA to issue orders under Section 125 which would prevent the Ohio electric utilities from complying with their sulfur dioxide emission limitations by the use of low sulfur coal produced in West Virginia; and

WHEREAS, Based on filings by the Ohio electric utilities with EPA, any order under Section 125 requiring those utilities to use only Ohio produced coal would jeopardize the annual sale of approximately six million tons of West Virginia produced coal beginning in 1980, which would represent a significant annual loss to the West Virginia economy; and

WHEREAS, EPA's authority under Section 125 is limited to prohibition of "other than locally or regionally available coal"; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia expresses its opposition to the manner in which EPA is applying Section 125 to monopolize and create special preference in the Ohio electric utility coal market in favor of Ohio coal producers. It is clear from the plain language and the legislative history of Section 125 that this section was not intended to create barriers to the free trade of West Virginia coal into West Virginia coal producers' normal markets in neighboring states, such as Ohio, nor was this section envisioned as a means to empower EPA to embargo against the shipment of West Virginia coal into Ohio to protect Ohio coal interests. Furthermore, in the interests of a strong coal industry as an important part of the
nation's energy policy, it would be unsound to apply Section 125 to Balkanize coal trade into a series of state markets for the purpose of shielding the Ohio coal industry from competition from West Virginia and other state producers; and, be it

Further Resolved, That the Legislature of the State of West Virginia urges the Environmental Protection Agency to define "local or regionally available coal" consistent with the intent of Congress which is in a fashion that recognizes the market traditionally shared by the many coal suppliers in a multi-state region encompassing the states of West Virginia, Ohio and others so that West Virginia coal can be sold to its utility customers in the neighboring state of Ohio; and, be it

Further Resolved, That copies of this resolution be sent to President Jimmy Carter, EPA Administrator Douglas Costle, and West Virginia's Congressional delegation.

HOUSE RESOLUTION NO. 7
(By Mrs. Spears and Mr. Teets)
[Adopted January 18, 1979]

Amending House Rule No. 95a, relating to fiscal notes.

Resolved by the House of Delegates:

That House Rule No. 95a be amended to read as follows:

Fiscal Notes

95a. Prior to consideration, by the House or by any committee thereof, of any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State, or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, which "fiscal note" shall conform to the requirements as to form and content prescribed by the "Fiscal Note Manual," prepared and adopted by the Committee on Rules to govern preparation of fiscal notes to bills introduced in the House of Delegates.

In the case of a bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or
other subdivision of the State, nothing herein shall prohibit con­sideration of such a bill if, in the opinion of the chairman of the committee to which the bill has been referred, or in the opinion of the Speaker, a reasonable time has elapsed since a fiscal note was requested and no fiscal note or an incomplete fiscal note has been furnished.

It shall be the responsibility of the legislator introducing a bill to obtain such note when required. Such note shall be attached to the bill when filed for introduction, if at all possible, and shall accompany any bill requiring such note when the same is reported from com­mittee.

The jackets of all measures with fiscal notes attached or requiring such notes shall have the words “Fiscal Note” or the initials “FN” clearly stamped or endorsed thereon.

Further Resolved, That Rule 95a, as amended herein, shall not take effect until January 15, 1980.

No act shall be void or voidable for noncompliance with this rule.

HOUSE RESOLUTION NO. 20
(By Mr. Speaker, Mr. See)
[Adopted February 2, 1979]

Amending the Rules of the House of Delegates, relating to a Pre­siding Officer in the absence of the Speaker.

Resolved by the House of Delegates:

That House Rule No. 8 be amended to read as follows:

Appointment of Speaker Pro Tempore, Presiding Officer in Ab­sence of Speaker

8. The Speaker shall appoint a Speaker pro tempore, who, during the absence of the Speaker, shall preside and perform all duties of the Speaker: Provided, That the Speaker may designate by appoint­ment in writing entered upon the Journal of the House, any member, other than the Speaker pro tempore, who, during the absence of the Speaker, shall preside and perform the duties of the Speaker until the Speaker returns to the chair: Provided, further, That the
Speaker may call any member to the chair to perform the duties of Speaker but such substitution shall not extend beyond an adjournment: Provided, however, That the Speaker pro tempore or any other member hereunder designated, shall so preside for a period not to exceed three consecutive legislative days, but for no longer period, except by special consent of the House.

SENATE RESOLUTION NO. 11
(By Mr. Moreland, etc.)
[Adopted February 8, 1979]

Urging the State Commissioner of Highways to designate a portion of new highway in Monongalia County as the "201st Memorial Way."

WHEREAS, The 201st Field Artillery of the West Virginia National Guard is the oldest active military organization in these United States; and

WHEREAS, The illustrious two hundred and forty year history of this proud fighting unit includes many famous campaigns in our country's wars, including the Bee Line Hike to Boston to engage the enemy in the Battle of Bunker Hill, frontier fighting in the early days of our Colonies, the decisive Battle of Point Pleasant and the Revolutionary War; and

WHEREAS, The 201st Field Artillery of the West Virginia National Guard, being one of the most highly rated units in the Army National Guard System and a proud organization with superb esprit de corps, has been an inspiration to the fighting men of our State; and

WHEREAS, The 201st Infantry and now Field Artillery is a well-known and highly respected military organization to most people in the north central part of West Virginia and, in fact, a great many families have had relatives who were members of this organization; and

WHEREAS, A new road is being constructed from the Mileground adjacent to the 201st Artillery Armory through the University Orchard and farm across the Stewartstown Road connecting onto and largely replacing the Chestnut Ridge Road which route for
planning purposes has been commonly referred to as the Orchard Road; and

WHEREAS, The identity of Orchard Road has little or not significance or meaning to the people of north central West Virginia as compared to the 201st Infantry and now the 201st Field Artillery; and

WHEREAS, The naming of the new road as the "201st Memorial Way" would honor and memorialize this fighting unit for its distinguished military service throughout the years; therefore, be it

Resolved by the Senate:

That the West Virginia Senate does urge and request that the State Commissioner of Highways designate the portion of new highway running from the Van Voorhis Road to U. S. Route 119 known as the Mileground as the "201st Memorial Way" and cause to be erected and maintained thereupon proper signs or other markers designating the same; and, be it

Further Resolved, That the Clerk is hereby directed to send copies of this resolution to the Governor of the State of West Virginia, the Honorable John D. Rockefeller IV, and to the State Commissioner of Highways, the Honorable Charles L. Miller.
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1979

CHAPTER 1

(H. B. 101—By Mr. Speaker, Mr. See)

(Passed April 11, 1979; in effect from passage. Approved by the Governor.)

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

Be it enacted by the Legislature of West Virginia:

Title

2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.

Section 1.—General Policy.—The purpose of this bill is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred eighty.

Sec. 2.—Definitions. For the purpose of this act: “Governor” shall mean the Governor of the State of West Virginia.
"Spending Unit" shall mean the department, agency or institution to which an appropriation is made.

The "fiscal year" one thousand nine hundred eighty shall mean the period from July first, one thousand nine hundred seventy-nine through June thirtieth, one thousand nine hundred eighty.

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated "from collections" the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Chapter 5A, Article 2 of the Code of West Virginia.

Sec. 3.—Classification of appropriations.—An appropriation for:

"Personal services" shall mean salaries, wages, and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

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

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending units.

"Current expenses" shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings or lands.

"Equipment" shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.
"Repairs and alterations" shall mean repairs to structures and improvements to property which do not increase the capital assets.

"Buildings" shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition; and

"Lands" shall mean the purchase of real property or interests in real property.

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

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

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

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<td>Department of welfare</td>
<td>4050</td>
<td>593</td>
</tr>
<tr>
<td>Department of welfare—West Virginia Children's Home</td>
<td>4120</td>
<td>596</td>
</tr>
<tr>
<td>Fairmont emergency hospital</td>
<td>4250</td>
<td>597</td>
</tr>
<tr>
<td>Greenbrier school for mentally retarded children</td>
<td>4140</td>
<td>596</td>
</tr>
<tr>
<td>Hopemont state hospital</td>
<td>4300</td>
<td>598</td>
</tr>
<tr>
<td>Pinecrest state hospital</td>
<td>4310</td>
<td>598</td>
</tr>
<tr>
<td>Solid waste disposal</td>
<td>4020</td>
<td>594</td>
</tr>
<tr>
<td>State board of education (rehabilitation division)</td>
<td>4400</td>
<td>594</td>
</tr>
<tr>
<td>State commission on aging</td>
<td>4060</td>
<td>595</td>
</tr>
<tr>
<td>State health department</td>
<td>3900</td>
<td>591</td>
</tr>
<tr>
<td>State health department—mental hospitals</td>
<td>4160</td>
<td>596</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>4260</td>
<td>598</td>
</tr>
</tbody>
</table>

### INCORPORATING AND RECORDING

<table>
<thead>
<tr>
<th>Office</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of state</td>
<td>2500</td>
<td>579</td>
</tr>
</tbody>
</table>

### JUDICIAL

<table>
<thead>
<tr>
<th>Court</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court—General Judicial</td>
<td>1110</td>
<td>571</td>
</tr>
</tbody>
</table>

### LEGAL

<table>
<thead>
<tr>
<th>Office</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney general</td>
<td>2400</td>
<td>579</td>
</tr>
<tr>
<td>Commission on uniform state laws</td>
<td>2450</td>
<td>579</td>
</tr>
</tbody>
</table>

### LEGISLATIVE

<table>
<thead>
<tr>
<th>Office</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>House of Delegates</td>
<td>1020</td>
<td>569</td>
</tr>
<tr>
<td>Joint expenses</td>
<td>1030</td>
<td>571</td>
</tr>
<tr>
<td>Senate</td>
<td>1010</td>
<td>568</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Board</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of architects</td>
<td>5950</td>
<td>611</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>5880</td>
<td>610</td>
</tr>
<tr>
<td>Board of embalmers and funeral directors</td>
<td>5930</td>
<td>610</td>
</tr>
</tbody>
</table>
Board of examiners for practical nurses—Acct. No. 5870
Board of land surveyors—Acct. No. 5850
Board of osteopathy—Acct. No. 5910
Board of pharmacy—Acct. No. 5900
Board of professional foresters—Acct. No. 5860
Board of registration for professional engineers—Acct. No. 5940
Board of sanitarians—Acct. No. 5990
Human rights commission—Acct. No. 5980
Insurance commissioner—Acct. No. 6160
State fire commission—Acct. No. 6170
State veterinary board—Acct. No. 5960
West Virginia civil service system—Acct. No. 5840
West Virginia public employees insurance board—Acct. No. 6150
West Virginia public employees retirement board—Acct. No. 6140
Women's commission—Acct. No. 6000

PROTECTION

Adjutant general (state militia)—Acct. No. 5800
Department of public safety—Acct. No. 5700

ROADS AND HIGHWAYS

State department of highways—Acct. No. 6410

§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 8120
Department of agriculture—Acct. No. 8180
Department of finance and administration (division of purchasing—revolving fund)—Acct. No. 8140
Department of finance and administration, (information system services division fund)—Acct. No. 8151
Department of natural resources—Acct. No. 8300
Department of public safety (inspection fees)—Acct. No. 8350
Public service commission—Acct. No. 8280
Public service commission (gas pipeline division)—Acct. No. 8285
Public service commission (motor carrier division)—Acct. No. 8290
Real estate commission—Acct. No. 8010
State committee of barbers and beauticians—Acct. No. 8220
Treasurer's office—Acct. No. 8000
West Virginia alcohol beverage control—Acct. No. 9270
West Virginia Board of Regents (capital improvement fund)—Acct. No. 8845
West Virginia Board of Regents (certain capital improvements)—Acct. No. 8860
West Virginia Board of Regents (special capital improvement fund)—Acct. No. 8855
West Virginia board of regents (special capital improvement fund)—Acct. No. 8840
West Virginia board of regents (state system special capital improvement fund)—Acct. No. 8835 622
West Virginia board of regents—West Virginia University
(Special capital improvement fund)—Acct. No. 8830 621
West Virginia racing commission—Acct. No. 8080 616

**PAYABLE FROM STATE ROAD FUND**

Department of motor vehicles—Acct. No. 6710 614
State department of highways—Acct. No. 6700 614
State tax department (gasoline tax division)—Acct. No. 6720 615

**PAYABLE FROM GENERAL SCHOOL FUND**

Department of education (veterans education)—Acct. No. 7020 615

**PAYABLE FROM MEDICAL SCHOOL FUND**

West Virginia University (medical school)—Acct. No. 9280 626

**PAYABLE FROM WORKMEN’S COMPENSATION FUND**

Workmen’s compensation commission—Acct. No. 9000 625

§3. Awards for claims against the state.

§4. Reappropriations.

§5. Appropriations from revenue sharing trust fund.

Department of finance and administration—Acct. No. 9740 633
Department of natural resources—Acct. No. 9725 633
Farm management commission—Acct. No. 9771 633
Governor’s office—Acct. No. 9721 632
State department of highways—Acct. No. 9705 632
State health department—Acct. No. 9715 632
Water development authority—Acct. No. 9743 633
West Virginia penitentiary—Acct. No. 9718 632

§6. Appropriation from countercyclical fiscal assistance trust fund.

§7. Reappropriations—"Revenue Sharing Trust Fund."

§8. Special revenue appropriations.

§9. State improvement fund appropriation.

§10. Specific funds and collection accounts.

§11. Appropriation for refunding erroneous payments.

§12. Sinking fund deficiencies.

§13. Appropriations from taxes and license fees.


§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.
Section 1.—Appropriations from general revenue.—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5A, Article 2 of the Code of West Virginia, the following amounts, as itemized for expenditure during the fiscal year one thousand nine hundred eighty.

LEGISLATIVE

Acct. No. 1010

1—Senate

Fiscal Year 1979-1980

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members</td>
<td>$292,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and per diem of officers and employees</td>
<td>$700,000</td>
</tr>
<tr>
<td>3</td>
<td>Expenses of Members</td>
<td>$236,000</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses and Contingent Fund</td>
<td>$295,000</td>
</tr>
<tr>
<td>5</td>
<td>Printing Blue Book</td>
<td>$160,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,683,000</td>
</tr>
</tbody>
</table>

The distribution of the Blue Book shall be by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary school within the state.

The appropriations for the Senate for the fiscal year 1978-79 are to remain in full force and effect, and are hereby reappropriated to June 30, 1980.

Any balances so reappropriated may be transferred and credited to the 1979-80 accounts.

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

The Clerk of the Senate with approval of the President is authorized to draw his requisitions upon the Auditor,
payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisition for same to be accompanied by the bills to be filed with the Auditor.

The Clerk of the Senate with approval of the President shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate with approval of the President shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his requisitions for the payment of all such staff personnel upon the State Auditor, payable out of the appropriation for Compensation and per diem of officers and employees or Current Expenses and Contingent Fund of the Senate for such services.

For duties imposed by law and the Senate, the Clerk of the Senate shall be paid a monthly salary as provided in Senate resolution adopted January, 1979, and payable out of the amount appropriated for compensation and per diem of officers and employees.

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and per diem of officers and employees</td>
<td>$ 460,000</td>
</tr>
<tr>
<td>3</td>
<td>Expenses of Members</td>
<td>$ 390,000</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses and Contingent Fund</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 2,100,000</td>
</tr>
</tbody>
</table>
The appropriations for the House of Delegates for the fiscal year 1978-79 are to remain in full force and effect, and are hereby reappropriated to June 30, 1980.

Any balances so reappropriated may be transferred and credited to the 1979-80 accounts.

Upon the written request of the Clerk of the House of Delegates, the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with approval of the Speaker, is authorized to draw his requisitions upon the Auditor, payable out of the Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates, and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates offices the requisition for the same to be accompanied by bills to be filed with the Auditor.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in House Resolution adopted January, 1979, payable from the Per Diem of Officers and Employees Fund or the Contingent Fund of the House of Delegates, and the full-time employees of the House of Delegates shall be paid at the salaries provided in said resolution.

The Speaker of the House of Delegates, upon approval of the House Committee on Rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, and the Clerk of the House is hereby authorized to draw requisitions upon the State Auditor, payable from the Per Diem of Officers and Employees Fund or the Contingent Fund of the House of Delegates, for such services.
3—Joint Expenses

Acct. No. 1030

1 Joint Committee on Government and Finance .................................................. $ 2,007,192
2 To pay cost of Legislative Printing ................................................................. 700,000
3 Other Legislative Committees ........................................................................... 50,000
4 Commission on Interstate Cooperation .............................................................. 80,000

6 Total .................................................................................................................. $ 2,837,192

The appropriations for Joint Expenses for the fiscal year 1978-79 are to remain in full force and effect and are hereby reappropriated to June 30, 1980. Any balances so reappropriated may be transferred and credited to the 1979-80 accounts.

Upon written request of the Clerk of the Senate and the Clerk of the House of Delegates, the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1 Personal Services ............................................................................................... $ 10,603,774
2 Other Expenses ................................................................................................ 1,640,730
3 Judges Retirement System ................................................................................ 750,000
4 Other Court Costs ............................................................................................ 1,770,000
5 Judicial Training
6 Program .............................................................................................................. 50,000
7 Mental Hygiene Fund ...................................................................................... 225,000

8 Total .................................................................................................................. $ 15,039,504

This appropriation shall be administered by the Administrative Director of the State Supreme Court of Appeals who shall draw his requisitions for warrants in payment in the form of payrolls, making deductions therefrom, as required by law, for taxes and other items.
The appropriation for Judges' Retirement System is to be transferred to the Judges' Retirement Fund, in accordance with the law relating thereto upon requisition of the Administrative Director of the State Supreme Court of Appeals.

Any unexpended balance remaining in this appropriation at the close of fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

EXECUTIVE

5—Governor's Office

Acct. No. 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>$50,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$826,125</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$216,042</td>
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<tr>
<td>Equipment</td>
<td>$5,932</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,098,099</strong></td>
</tr>
</tbody>
</table>

6—Office of Economic and Community Development

Acct. No. 1210

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,342,500</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,125,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$20,100</td>
</tr>
<tr>
<td>Federal-State Coordination</td>
<td>$1,893,931</td>
</tr>
<tr>
<td>Personal Services</td>
<td>672,113</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>846,800</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>3,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>14,568</td>
</tr>
<tr>
<td>A.R.C. Assessment</td>
<td>356,950</td>
</tr>
<tr>
<td><strong>Office of Criminal Justice and Highway Safety</strong></td>
<td>$400,000</td>
</tr>
<tr>
<td><strong>National Youth Science Camp</strong></td>
<td>$166,612</td>
</tr>
<tr>
<td>Personal Services</td>
<td>64,196</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>102,416</td>
</tr>
<tr>
<td><strong>Economic and Development Loan Fund</strong></td>
<td>$5,000,000</td>
</tr>
<tr>
<td><strong>Regional Council—to match Federal Funds</strong></td>
<td>$220,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$11,168,143</strong></td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in accounts "Federal-State Coordination," "Office of Criminal Justice and Highway Safety", "Regional Council to match Federal Funds", and "National Youth Science Camp" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

7—Governor's Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total __________________________ $ 204,140

2 To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.

8—Governor's Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total __________________________ $ 500,000

2 Of the appropriation there may be expended, at the discretion of the governor, an amount not to exceed $1,000.00 as West Virginia's contribution to the Interstate Oil Compact Commission.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

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 this appropriation may be transferred to any department for such purposes.

10—Governor's Office—McMenemy and Stonewood Relief

Acct. No. 1270

1 Any unexpended balance remaining in the appropriation for
2 "Governor's Office—McMchen and Stonewood Relief" at the
close of the fiscal year 1978-79 is hereby reappropriated
for expenditure during the fiscal year 1979-80.

11—Office of Emergency Services

Acct. No. 1300

1 Personal Services _______________________________ $ 187,934
2 Current Expenses _______________________________ 38,910
3 Equipment ________________________________ 11,190

4 Total ________________________________ $ 238,034

5 Any unexpended balance remaining in the appropriation
6 "Communications Center" at the close of the fiscal year 1978-
7 79 is hereby reappropriated for expenditure during the fiscal
8 year 1979-80.

12—Governor's Office

Emergency Flood Disaster Relief

Acct. No. 1310

1 The balance remaining unexpended in this appropriation,
2 as reappropriated for expenditure in fiscal year 1978-1979,
3 is hereby expired.

FISCAL

13—Auditor's Office—General Administration

Acct. No. 1500

1 Salary of State Auditor _______________________________ $ 32,500
2 Other Personal Services _______________________________ 1,024,006
3 Current Expenses ________________________________ 399,325
4 Equipment ________________________________ 39,700
5 Microfilm ________________________________ 20,000
6 Representation of Needy Persons Fund ________ 1,500,000

7 Total ________________________________ $ 3,015,531
14—Auditor’s Office—Social Security

Acct. No. 1510

1 To match contributions of state employees for Social Security—Total $ 5,000,000

The above appropriation is intended to cover the state’s share of social security costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

15—Treasurer’s Office

Acct. No. 1600

1 Salary of State Treasurer $ 35,000
2 Other Personal Services 529,375
3 Current Expenses 242,020
4 Equipment 30,000
5 Microfilm Program 7,700

Total $ 844,095

16—Treasurer’s Office—School Building Sinking Fund

Acct. No. 1650

1 Total $ 18,402,500

Any unexpended balance remaining in the appropriation for “Treasurer’s Office—School Building Sinking Fund” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.
### 17—Municipal Bond Commission

**Acct. No. 1700**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$61,436</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$10,550</td>
</tr>
<tr>
<td>3 Total</td>
<td>$71,986</td>
</tr>
</tbody>
</table>

### 18—State Tax Department

**Acct. No. 1800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,692,854</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,397,622</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$66,287</td>
</tr>
<tr>
<td>4 Circuit Breaker Reimbursement</td>
<td>$15,000</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>$108,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$6,279,763</td>
</tr>
</tbody>
</table>

7 The above appropriation “Unclassified” is to be used to implement Enrolled Senate Bill No. 122, Acts of the Legislature, Regular Session, 1979.

### 19—State Tax Department

**Property Appraisal**

**Acct. No. 1850**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,884,143</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$889,583</td>
</tr>
<tr>
<td>3 Reimbursement to Counties for Computerization</td>
<td>$80,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$25,435</td>
</tr>
<tr>
<td>6 Total</td>
<td>$2,879,161</td>
</tr>
</tbody>
</table>

7 Any unexpended balance remaining in the appropriation for "Other Expenses" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.
### Appropriations

**Department of Finance and Administration**

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2100</td>
<td>Personal Services</td>
<td>$2,821,811</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$842,150</td>
</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>$215,000</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>$26,500</td>
</tr>
<tr>
<td></td>
<td>Postage</td>
<td>$750,000</td>
</tr>
<tr>
<td></td>
<td>Utilities</td>
<td>$550,000</td>
</tr>
<tr>
<td></td>
<td>Fire Service Fee</td>
<td>$73,965</td>
</tr>
<tr>
<td></td>
<td>Building Equipment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Supplies</td>
<td>$25,000</td>
</tr>
<tr>
<td></td>
<td>Major Building</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>Repairs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$5,304,426</td>
</tr>
</tbody>
</table>

The Workmen's Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Department of Highways, State Health Department and State Tax Department—Income Tax Division shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the Postage account of the Department of Finance and Administration such amounts. Should this appropriation for Postage be insufficient to meet the mailing requirements of the State spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for the Department for postage in excess of this appropriation.

Any unexpended balance remaining in the “Postage Account” at the close of the fiscal year 1978-79 is hereby appropriated for expenditure during the fiscal year 1979-80.
fiscal year 1978-79 for “Major Building Repairs” is hereby reappropriated for expenditure during the fiscal year 1979-80, (Major Building Repairs to include maintenance and repairs to Governor’s Mansion).

State Department of Highways shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to the provisions of Chapter 17, Article 2-A, Section 13 of the Code of West Virginia.

21—State Board of Insurance

Acct. No. 2250

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$64,200</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$21,515</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td>Insurance Fund</td>
<td>$2,100,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,187,715</td>
</tr>
</tbody>
</table>

The above appropriation on line 4, is for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various State agencies. Should this appropriation be insufficient to meet the requirements of the State spending units, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Board of Insurance any amounts required for that department for costs in excess of this appropriation.

Any and all of the funds appropriated for “Insurance Fund”, may be transferred to a special account for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees.

Any or all of the funds appropriated for “Insurance Fund” may be transferred to a special account for disbursement for payment of premiums and insurance losses.
APPROPRIATIONS

LEGAL

22—Attorney General

Acct. No. 2400

1 Salary of Attorney General $35,000
2 Other Personal Services 1,205,413
3 Current Expenses 180,064
4 Equipment 35,000
5 To protect the resources or tax structure of the State in controversies or legal proceedings affecting same 3,250
6 Consumer Protection 211,707
   Personal Services 167,455
   Current Expenses 40,452
   Equipment 3,800

9 Total 1,670,434

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

23—Commission on Uniform State Laws

Acct. No. 2450

1 Unclassified—Total $9,000

To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

24—Secretary of State

Acct. No. 2500

1 Salary of Secretary of State $30,000
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$274,961</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$93,014</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,100</td>
</tr>
<tr>
<td>5 Regulation of Charitable Fund Raising</td>
<td>$55,796</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$45,796</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$10,000</td>
</tr>
<tr>
<td>6 Certification of Primary and General Elections</td>
<td>$4,500</td>
</tr>
<tr>
<td>7 Publication of State Register</td>
<td>$1,500</td>
</tr>
<tr>
<td>8 Total</td>
<td>$462,871</td>
</tr>
</tbody>
</table>

### EDUCATIONAL

#### 25—State Department of Education

Acct. No. 2770

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Teacher Education Program—Total</td>
<td>$140,000</td>
</tr>
</tbody>
</table>

#### 26—West Virginia Board of Regents (Control)

Acct. No. 2790

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$90,087,682</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$20,374,984</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$1,020,400</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>5 Veterinary, Optometry, Podiatry, and Architectural Tuition</td>
<td>$720,000</td>
</tr>
<tr>
<td>6 Bureau of Coal Research</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>8 National Research Center for</td>
<td>$1,250,000</td>
</tr>
<tr>
<td>10 Unclassified</td>
<td>$200,000</td>
</tr>
<tr>
<td>11 Title I—Matching Funds</td>
<td>$133,000</td>
</tr>
<tr>
<td>12 Scholarship Program</td>
<td>$2,600,000</td>
</tr>
<tr>
<td>13 Transportation Services—</td>
<td>$240,000</td>
</tr>
<tr>
<td>15 Transportation—P.R.T.</td>
<td>$450,000</td>
</tr>
<tr>
<td>16 Total</td>
<td>$122,076,066</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation "Moving of WWVU-TV" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

Any unexpended balance remaining in the appropriation "Washington Carver Camp" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

27—West Virginia Board of Regents

Acct. No. 2800

1 Personal Services ........................................ $ 494,340
2 Current Expenses .......................................... 146,881
3 Equipment .................................................. 3,500

4 Total .......................................................... $ 644,721

28—West Virginia College of Osteopathic Medicine

Acct. No. 2810

1 Unclassified—Total ....................................... $ 3,540,500

2 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

29—Marshall University—Medical School

Acct. No. 2840

1 Unclassified—Total ....................................... $ 2,297,323

2 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.
### APPROPRIATIONS

30—West Virginia University—Medical School

#### Acct. No. 2850

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$9,655,700</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$5,165,960</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$428,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$267,500</td>
</tr>
<tr>
<td>5</td>
<td>Family Practice Residency Support Program</td>
<td>$428,000</td>
</tr>
<tr>
<td>6</td>
<td>Intern and Residency Support Programs for Community Hospitals</td>
<td>$882,750</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$16,827,910</td>
</tr>
</tbody>
</table>

To be transferred to the West Virginia University—Medical School Fund upon the requisition of the Governor.

31—State Department of Education

#### Acct. No. 2860

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$961,534</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$688,603</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$13,000</td>
</tr>
<tr>
<td>4</td>
<td>National Defense Education Act</td>
<td>$543,156</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>$419,888</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>$123,268</td>
</tr>
<tr>
<td>5</td>
<td>Statewide Testing Program</td>
<td>$142,074</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>$54,274</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>$87,800</td>
</tr>
<tr>
<td>6</td>
<td>Safety Education</td>
<td>$216,000</td>
</tr>
<tr>
<td>7</td>
<td>Aid to Children’s Home</td>
<td>$50,000</td>
</tr>
<tr>
<td>8</td>
<td>Regional Education Service Agencies</td>
<td>$440,000</td>
</tr>
<tr>
<td>9</td>
<td>Project 0629-061—Identification and Remediation of Learning Disabilities</td>
<td>$100,956</td>
</tr>
<tr>
<td>10</td>
<td>Project 0629-062—Diagnostic and Remediation of Learning Disabilities</td>
<td>$118,733</td>
</tr>
<tr>
<td>11</td>
<td>Project 0629-067—Early Learning and</td>
<td>$65,770</td>
</tr>
<tr>
<td></td>
<td>Child Care</td>
<td>$64,312</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>$1,458</td>
</tr>
<tr>
<td>15</td>
<td>Project 0629-077—Early Learning and</td>
<td>$128,202</td>
</tr>
<tr>
<td>16</td>
<td>Child Care</td>
<td>$158,202</td>
</tr>
</tbody>
</table>
17  Project 0629-078—Early Learning and
18    Child Care .............................................. 161,135
        Personal Services .............................. 94,084
        Other Expenses ................................. 67,051

19  Total .................................................. $ 3,629,163

20  The above appropriation includes the State Board of Edu-
21    cation and their executive offices.
22  Any part or all of the appropriation for "National Defense
23    Education Act" may be transferred to a Special Revenue Fund
24    for the purpose of matching Federal Funds for this program.

32—State Department of Education—School Lunch Program

    Acct. No. 2870

1  Personal Services ........................................ $ 145,052
2  Current Expenses ......................................... 36,796
3  Aid to Counties—Includes hot lunches and
4    canning for hot lunches ................................ 1,944,000

5  Total .................................................. $ 2,125,848

33—State Board of Education—Vocational Division

    Acct. No. 2890

1  Personal Services ........................................ $ 255,167
2  Current Expenses ......................................... 99,714
3  Equipment .................................................. 7,000
4  Vocational Aid ........................................... 8,948,145
5  Adult Basic Education ................................. 700,000
6  Replacement of Equipment ............................ 750,000
7  Capital Outlay ........................................... 800,000

8  Total .................................................. $ 11,560,026

9  Any unexpended balance remaining in the appropriation for
10    “Building Construction” at the close of the fiscal year 1978-
11    79 is hereby reappropriated for expenditure during the fiscal
12    year 1979-80.
### State Department of Education—Professional Educators

**Acct. No. 2900**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$63,754,111</td>
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</tbody>
</table>

#### Educational Broadcasting Authority

**Acct. No. 2910**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$66,873</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$34,689</td>
</tr>
<tr>
<td>Equipment</td>
<td>$9,300</td>
</tr>
<tr>
<td>Regional ETV</td>
<td>$1,682,141</td>
</tr>
<tr>
<td>WWVU-TV</td>
<td>$819,085</td>
</tr>
<tr>
<td>Total</td>
<td>$2,612,088</td>
</tr>
</tbody>
</table>

“Regional ETV” is for participation in the construction and operation of Regional ETV stations by Marshall University, Concord College, Bluefield State College, West Virginia Institute of Technology, and West Virginia State College, and the acquisition of a new FM radio station to serve the northern panhandle; and such funds may be transferred to special revenue accounts for matching County and/or Federal Funds.

### State Board of Education—Vocational Division

**Acct. No. 2940**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Expenses—Total</td>
<td>$550,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

### State Department of Education—State Aid to Schools

**Acct. No. 2950**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Educators</td>
<td>$222,224,421</td>
</tr>
<tr>
<td>Other Personnel</td>
<td>$44,444,884</td>
</tr>
<tr>
<td>Fixed Charges</td>
<td>$21,680,214</td>
</tr>
<tr>
<td>Transportation Charges</td>
<td>$13,094,808</td>
</tr>
<tr>
<td>Administration</td>
<td>$2,222,244</td>
</tr>
</tbody>
</table>
Other Current Expenses $26,666,931
National Average Attainment $25,285,875
Program Improvement $1,600,218
Increased Enrollment $1,500,000

Subtotal $358,719,595
Less Local Share $60,067,272
Total $298,652,323

38—State Department of Education—Aid for Exceptional Children

Acct. No. 2960

Personal Services $238,896
Current Expenses $92,888
Out-of-State Instruction $400,000
Aid to Counties $6,800,000

Total $7,531,784

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

39—State Board of Education—Early Childhood Aides

Acct. No. 2970

Early Childhood Aides—Total $3,192,062

40—Teachers' Retirement Board

Acct. No. 2980

Teachers’ Retirement Fund—Total $30,185,000

41—State Department of Education

Acct. No. 2990

To fund minimum salaries for Support $31,993,031

Personnel—Total $31,993,031
### 42—West Virginia Schools for the Deaf and the Blind

**Acct. No. 3330**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,268,053</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>521,972</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>109,327</td>
</tr>
<tr>
<td>Equipment</td>
<td>97,621</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$2,996,973</td>
</tr>
</tbody>
</table>

### 43—State FFA-FHA Camp and Conference Center

**Acct. No. 3360**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$106,170</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>26,815</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>24,900</td>
</tr>
<tr>
<td>Equipment</td>
<td>23,000</td>
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<tr>
<td><strong>Total</strong></td>
<td>$180,885</td>
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</table>

### 44—West Virginia Library Commission

**Acct. No. 3500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>758,978</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>173,427</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>3,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>Grants-in-Aid</td>
<td>2,882,598</td>
</tr>
<tr>
<td>Library Matching Fund (Construction)</td>
<td>1,200,000</td>
</tr>
<tr>
<td>Books and Periodicals</td>
<td>220,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$5,243,503</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Library Matching Fund (Construction)” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

### 45—Department of Culture and History

**Acct. No. 3510**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>870,671</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>696,762</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>40,000</td>
</tr>
<tr>
<td>5</td>
<td>Mt. State Forest Festival</td>
<td>25,000</td>
</tr>
<tr>
<td>6</td>
<td>Theatre Arts of West Virginia</td>
<td>230,000</td>
</tr>
<tr>
<td>7</td>
<td>Alpine Festival</td>
<td>10,000</td>
</tr>
<tr>
<td>8</td>
<td>Arts and Humanities Fund</td>
<td>500,000</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>95,909</td>
</tr>
<tr>
<td></td>
<td>Grants and Contractural Services</td>
<td>404,091</td>
</tr>
<tr>
<td>9</td>
<td>West Virginia Water Festival</td>
<td>8,000</td>
</tr>
<tr>
<td>10</td>
<td>Tri-County Fair</td>
<td>5,000</td>
</tr>
<tr>
<td>11</td>
<td>Oil and Gas Festival</td>
<td>5,000</td>
</tr>
<tr>
<td>12</td>
<td>White Water Weekend</td>
<td>3,000</td>
</tr>
<tr>
<td>13</td>
<td>Calhoun County Wood Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>14</td>
<td>New Martinsville Regatta</td>
<td>2,500</td>
</tr>
<tr>
<td>15</td>
<td>Braxton County Regatta</td>
<td>6,000</td>
</tr>
<tr>
<td>16</td>
<td>Cherry River Festival</td>
<td>2,000</td>
</tr>
<tr>
<td>17</td>
<td>Mother’s Day Founders Festival</td>
<td>15,000</td>
</tr>
<tr>
<td>18</td>
<td>Mt. Heritage Arts and Crafts Fair</td>
<td>5,000</td>
</tr>
<tr>
<td>19</td>
<td>Wellsburg July 4th Celebration</td>
<td>2,500</td>
</tr>
<tr>
<td>20</td>
<td>Sternwheel Regatta</td>
<td>10,000</td>
</tr>
<tr>
<td>21</td>
<td>Sistersville Outboard Regatta</td>
<td>2,000</td>
</tr>
<tr>
<td>22</td>
<td>Ohio River Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>23</td>
<td>Ripley 4th of July Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>24</td>
<td>King Coal Festival</td>
<td>1,000</td>
</tr>
<tr>
<td>25</td>
<td>General Adam Stephen Memorial Association</td>
<td>25,000</td>
</tr>
<tr>
<td>26</td>
<td>Wheeling Symphony Society—50th Anniversary</td>
<td>12,000</td>
</tr>
<tr>
<td>27</td>
<td>Independence Hall, Wheeling, West Virginia</td>
<td>100,000</td>
</tr>
<tr>
<td>28</td>
<td>Delf Norona Museum</td>
<td>30,000</td>
</tr>
<tr>
<td>29</td>
<td>Prickett’s Fort State Park</td>
<td>90,000</td>
</tr>
<tr>
<td>30</td>
<td>Fort New Salem</td>
<td>2,000</td>
</tr>
<tr>
<td>31</td>
<td>Total</td>
<td>$2,730,933</td>
</tr>
</tbody>
</table>

The above appropriations, Mt. State Forest Festival, Theatre Arts of West Virginia, Alpine Festival, West Virginia Water Festival, Tri-County Fair, Oil and Gas Festival, White Water Weekend, Calhoun County Wood Festival, New Martinsville Regatta, Braxton County Regatta, Cherry River Festival,
Mother’s Day Founders Festival, Mt. Heritage Arts and Crafts Fair, Wellsburg July 4th Celebration, Sternwheel Regatta, Sistersville Outboard Regatta, Ohio River Festival, Ripley 4th of July Festival and King Coal Festival, shall be expended only upon authorization of the Director of the Department of Culture and History and in accordance with the provisions of Chapter 5A and Chapter 12, Article 3 of the Code of West Virginia.

All Federal moneys received as reimbursement to the Science and Cultural Center, for moneys expended from the General Revenue Fund for Arts and Humanities are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation for “Independence Hall, Wheeling, West Virginia” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

**CORRECTION**

46—Department of Corrections
Probation and Parole

Acct. No. 3650

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salaries of Members of Board of</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Probation and Parole</td>
<td>$48,000</td>
</tr>
<tr>
<td>3</td>
<td>Other Personal Services</td>
<td>$25,646</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$18,745</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$94,391</td>
</tr>
</tbody>
</table>

47—Department of Corrections
Community Service
Northern Region

Acct. No. 3660

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$368,684</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$81,517</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$500</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$450,701</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

#### 48—Department of Corrections

**Community Service**

**Southern Region**

**Acct. No. 3670**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
<td>$ 494,904</td>
</tr>
<tr>
<td>2  Current Expenses</td>
<td>134,600</td>
</tr>
<tr>
<td>3  Repairs and Alterations</td>
<td>1,500</td>
</tr>
<tr>
<td>4  Equipment</td>
<td>2,895</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 633,899</strong></td>
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</tbody>
</table>

#### 49—Department of Corrections

**Acct. No. 3680**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1  Salary of Commissioner</td>
<td>$ 30,000</td>
</tr>
<tr>
<td>2  Other Personal Services</td>
<td>399,820</td>
</tr>
<tr>
<td>3  Current Expenses</td>
<td>109,850</td>
</tr>
<tr>
<td>4  Repairs and Alterations</td>
<td>2,500</td>
</tr>
<tr>
<td>5  Equipment</td>
<td>1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 543,170</strong></td>
</tr>
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</table>

#### 50—Anthony Center

**Acct. No. 3690**

<table>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1  Personal Services</td>
<td>$ 459,826</td>
</tr>
<tr>
<td>2  Current Expenses</td>
<td>148,340</td>
</tr>
<tr>
<td>3  Repairs and Alterations</td>
<td>10,700</td>
</tr>
<tr>
<td>4  Equipment</td>
<td>5,597</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$ 624,463</strong></td>
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#### 51—West Virginia Industrial School for Boys

**Acct. No. 3700**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
<td>$ 1,027,415</td>
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<tr>
<td>2  Current Expenses</td>
<td>301,300</td>
</tr>
<tr>
<td>3  Repairs and Alterations</td>
<td>47,450</td>
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</table>
### Appropriations

#### [Ch. 1](#)

<table>
<thead>
<tr>
<th>4</th>
<th>Equipment</th>
<th>12,950</th>
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<tbody>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,389,115</td>
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</table>

#### 52—Davis Center

Acct. No. 3710

| 1 | Personal Services | $389,246 |
| 2 | Current Expenses   | 154,366  |
| 3 | Repairs and Alterations | 17,950 |
| 4 | Equipment          | 22,500   |
| 5 | Total              | $584,062 |

#### 53—West Virginia Industrial Home for Girls

Acct. No. 3720

| 1 | Personal Services | $481,500 |
| 2 | Current Expenses   | 113,800  |
| 3 | Repairs and Alterations | 7,850 |
| 4 | Equipment          | 8,140    |
| 5 | Total              | $611,290 |

#### 54—Leckie Center

Acct. No. 3730

| 1 | Personal Services | $404,343 |
| 2 | Current Expenses   | 151,490  |
| 3 | Repairs and Alterations | 13,700 |
| 4 | Equipment          | 10,022   |
| 5 | Total              | $579,555 |

#### 55—West Virginia State Prison for Women

Acct. No. 3740

<p>| 1 | Personal Services | $385,906 |
| 2 | Current Expenses   | 130,960  |</p>
<table>
<thead>
<tr>
<th>Ch. 1</th>
<th>APPROPRIATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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</table>

56—West Virginia Penitentiary

Acct. No. 3750

<p>| | | | | |</p>
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<tr>
<td>1</td>
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<td>$2,685,873</td>
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<td>2</td>
<td>Current Expenses</td>
<td>1,290,000</td>
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<td>Repairs and Alterations</td>
<td>79,100</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>15,085</td>
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<tr>
<td>5</td>
<td>Prison Industries—Embossing Machine</td>
<td>90,000</td>
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<tr>
<td></td>
<td>Total</td>
<td>$4,160,058</td>
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</table>

57—Huttonsville Correctional Center

Acct. No. 3760

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,625,810</td>
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<td>1,022,800</td>
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<td>Repairs and Alterations</td>
<td>68,350</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>10,500</td>
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<td>Total</td>
<td>$2,727,460</td>
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HEALTH AND WELFARE

58—State Health Department

Acct. No. 3900

Administration (3900)

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$909,770</td>
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<td>2</td>
<td>Current Expenses</td>
<td>581,058</td>
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<td>3</td>
<td>Equipment</td>
<td>19,200</td>
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<td></td>
<td>Subtotal</td>
<td>1,510,028</td>
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</table>

Preventive Health (3905)

<p>| | | | | |</p>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Personal Services</td>
<td>989,622</td>
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<td></td>
</tr>
<tr>
<td>Appropriations</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>--------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>892,347</td>
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<tr>
<td>Equipment</td>
<td>106,834</td>
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<td>Subtotal</td>
<td>1,988,803</td>
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</table>

**Alcoholism and Drug Abuse (3910)**

| Personal Services | 100,000 |
| Current Expenses | 500,000 |
| Subtotal | 600,000 |

**Maternal and Child Health (3915)**

| Personal Services | 853,220 |
| Current Expenses | 1,713,550 |
| Equipment | 89,450 |
| Subtotal | 2,656,220 |

**Environmental Health (3920)**

| Personal Services | 703,881 |
| Current Expenses | 205,950 |
| Equipment | 19,055 |
| Subtotal | 928,886 |

**Community Service (3925)**

| Personal Services | 613,417 |
| Current Expenses | 224,697 |
| Equipment | 625 |
| State Aid to Local Agencies | 2,530,000 |
| Nicholas County Health Center | 50,000 |
| Contracts for Community Mental Health- Mental Retardation Services | 10,440,000 |
| Study of Rehabilitation Centers | 50,000 |
| Subtotal | 13,908,739 |

**Research and Statistics (3930)**

<p>| Personal Services | 225,961 |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Current Expenses</td>
<td>15,885</td>
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<tr>
<td>32</td>
<td>Equipment</td>
<td>100</td>
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<td>33</td>
<td>Subtotal</td>
<td>241,946</td>
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**Institutional Service (3935)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>Personal Services</td>
<td>381,863</td>
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<tr>
<td>35</td>
<td>Current Expenses</td>
<td>41,200</td>
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<tr>
<td>36</td>
<td>Equipment</td>
<td>5,925</td>
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<tr>
<td>37</td>
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<td>428,988</td>
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</table>

**State Hygienic Laboratory (3940)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>Personal Services</td>
<td>299,374</td>
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<tr>
<td>39</td>
<td>Current Expenses</td>
<td>234,594</td>
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<tr>
<td>40</td>
<td>Equipment</td>
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<tr>
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<td>Subtotal</td>
<td>556,318</td>
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**Certification, Licensure and Inspection (3945)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>42</td>
<td>Personal Services</td>
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<td>43</td>
<td>Current Expenses</td>
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<td>44</td>
<td>Equipment</td>
<td>4,200</td>
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<td>631,079</td>
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**Office of Chief Medical Examiner (3950)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Personal Services</td>
<td>327,148</td>
</tr>
<tr>
<td>47</td>
<td>Current Expenses</td>
<td>524,024</td>
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<tr>
<td>48</td>
<td>Repairs and Alterations</td>
<td>4,000</td>
</tr>
<tr>
<td>49</td>
<td>Equipment</td>
<td>15,050</td>
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<tr>
<td>50</td>
<td>Subtotal</td>
<td>870,222</td>
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**Mental Retardation (3955)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
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</thead>
<tbody>
<tr>
<td>51</td>
<td>Personal Services</td>
<td>85,600</td>
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<tr>
<td>52</td>
<td>Current Expenses</td>
<td>70,000</td>
</tr>
<tr>
<td>53</td>
<td>Subtotal</td>
<td>155,600</td>
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</tbody>
</table>
Emergency Medical Services (3960)

54 Personal Services ........................................... 207,259
55 Current Expenses ............................................. 174,700
56 Equipment ..................................................... 4,000
57 E.M.S.—Entities—County Grants .......................... 2,200,000

58 Subtotal ............................................................ 2,585,959

59 Total ............................................................... $ 27,062,788

Any unexpended balance remaining in the appropriation for "Mental Health Center—Princeton", "Logan-Mingo Area Mental Health Center" and "Home Health Services" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

59—Department of Veterans Affairs
Veterans Home

Acct. No. 4010

1 Current Expenses .............................................. $ 82,120
2 Equipment ....................................................... 369,900

3 Total ............................................................... $ 452,020

60—Solid Waste Disposal

Acct. No. 4020

1 Personal Services .............................................. $ 71,052
2 Current Expenses .............................................. 35,380
3 Equipment ....................................................... —0—

4 Total ............................................................... $ 106,432

61—Department of Veterans Affairs

Acct. No. 4030

1 In aid of Veterans Day Patriotic Exercises ............ $ 5,000
2 To be expended subject to the approval of the Department
of Veterans Affairs upon presentation of satisfactory plans by the Grafton G. A. R. Post, American Legion, Veterans of Foreign Wars and Sons of Veterans.

62—Department of Veterans Affairs

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$509,936</td>
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<td>Current Expenses</td>
<td>$88,362</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,600</td>
</tr>
<tr>
<td>4</td>
<td>Educational opportunities for children of War Veterans</td>
<td>$20,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$621,898</td>
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63—Department of Welfare

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,027,237</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,797,899</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$49,045</td>
</tr>
<tr>
<td>4</td>
<td>Public Assistance Grants</td>
<td>$17,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$612,042</td>
</tr>
<tr>
<td>6</td>
<td>Services to Children, Aged, Blind and Disabled</td>
<td>$14,800,000</td>
</tr>
<tr>
<td>7</td>
<td>Indigent Burials</td>
<td>$600,000</td>
</tr>
<tr>
<td>8</td>
<td>Emergency Assistance Program</td>
<td>$700,000</td>
</tr>
<tr>
<td>9</td>
<td>Direct Medical Services</td>
<td>$30,500,000</td>
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<tr>
<td>10</td>
<td>Total</td>
<td>$79,086,223</td>
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</table>

Item 6 above includes the funds to be used for juveniles in accordance with H. B. 1484, enacted by Acts of the Legislature, Regular Session, 1979.

64—State Commission on Aging

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Current Expenses</td>
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<td>Equipment</td>
<td>$900</td>
</tr>
<tr>
<td>4</td>
<td>Programs for Elderly</td>
<td>$1,449,230</td>
</tr>
</tbody>
</table>
5 Hawse Retirement Village—Hardy County
6 Clinical Equipment ........................................... 25,000

7 Total .................................................................. $ 1,613,993

8 Any unexpended balance remaining in the appropriation for
9 "Senior Citizens Center" at the close of the fiscal year 1978-
10 79 is hereby reappropriated for expenditure during the fiscal
11 year 1979-80, with the purpose of such item to be redesig-
12 nated: "Senior Citizens Center—land acquisition, construction,
13 repairs or alterations."

65—Department of Welfare—West Virginia Children's Home
Acct. No. 4120

1 Personal Services ............................................. $ 160,500
2 Current Expenses ............................................. 84,675
3 Repairs and Alterations ................................. 16,300
4 Equipment ..................................................... 7,800

5 Total .................................................................. $ 269,275

66—Greenbrier School for Mentally Retarded Children
Acct. No. 4140

1 Personal Services ............................................. $ 869,421
2 Current Expenses ............................................. 233,865
3 Repairs and Alterations ................................. 98,950
4 Equipment ..................................................... 41,200

5 Total .................................................................. $ 1,243,436

67—State Health Department—Mental Hospitals
Acct. No. 4160

1 Personal Services ............................................. $ 17,476,711
2 Current Expenses ............................................. 4,968,479
3 Repairs and Alterations ................................. 606,825
4 Equipment ..................................................... 267,709
5 Student Nurse Affiliation Program
6 (Huntington) .................................................. 60,130
7 Psychiatric Training Center—Student Nurses
8 (Weston) ................................................................. 173,643
9 Lakin State Hospital—
10 Capital Construction .................................................. —0—

11 Total ........................................................................... $ 23,553,497

12 The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3 and 4 above.

68—Colin Anderson Center

Acct. No. 4190

1 Personal Services ....................................................... $ 6,088,799
2 Current Expenses ....................................................... 999,885
3 Repairs and Alterations ............................................. 250,945
4 Equipment ................................................................. 183,662

5 Total ........................................................................... $ 7,523,291

69—Fairmont Emergency Hospital

Acct. No. 4250

1 Personal Services ....................................................... $ 617,927
2 Current Expenses ....................................................... 267,350
3 Repairs and Alterations ............................................. 10,100
4 Equipment ................................................................. 27,130

5 Total ........................................................................... $ 922,507
70—Welch Emergency Hospital

Acct. No. 4260

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
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<tr>
<td>2 Current Expenses</td>
<td>$327,013</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$61,500</td>
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<tr>
<td>4 Equipment</td>
<td>$50,000</td>
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<td><strong>Total</strong></td>
<td><strong>$1,564,117</strong></td>
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71—Andrew S. Rowan Memorial Home

Acct. No. 4270

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<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<td>3 Repairs and Alterations</td>
<td>$54,700</td>
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<td>4 Equipment</td>
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72—Hopemont State Hospital

Acct. No. 4300

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<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<td>3 Repairs and Alterations</td>
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<td>4 Equipment</td>
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<td><strong>Total</strong></td>
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73—Pinecrest State Hospital

Acct. No. 4310

<table>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,116,840</td>
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<tr>
<td>2 Current Expenses</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$88,500</td>
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<td>4 Equipment</td>
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<td><strong>Total</strong></td>
<td><strong>$4,148,768</strong></td>
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### 74—Denmar State Hospital

**Acct. No. 4320**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,110,629</td>
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<tr>
<td>2 Current Expenses</td>
<td>615,406</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>58,300</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>115,850</td>
</tr>
<tr>
<td>5 Total</td>
<td>$2,900,185</td>
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</table>

### 75—State Board of Education—Rehabilitation Division

**Acct. No. 4400**

<table>
<thead>
<tr>
<th>Item Description</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,941,829</td>
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<tr>
<td>2 Current Expenses</td>
<td>506,753</td>
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<tr>
<td>3 Rehabilitation Center</td>
<td>2,150,652</td>
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<tr>
<td>Personal Services</td>
<td>1,676,437</td>
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<td>Current Expenses</td>
<td>449,215</td>
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<td>Equipment</td>
<td>25,000</td>
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<tr>
<td>4 Case Services</td>
<td>2,386,016</td>
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<tr>
<td>5 Supervisory Services for Vending Stand Program</td>
<td>190,266</td>
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<td>Equipment</td>
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<td>7 Training and Special Projects</td>
<td>707,637</td>
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<td>Personal Services</td>
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<td>Current Expenses</td>
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<td>Contractual Services</td>
<td>660,000</td>
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<tr>
<td>8 Social Security Matching Fund</td>
<td>220,000</td>
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<td>9 Teletypewriters</td>
<td>27,500</td>
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<td>10 Total</td>
<td>$8,130,653</td>
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### BUSINESS AND INDUSTRIAL RELATIONS

#### 76—Bureau of Labor and Department of Weights and Measures

**Acct. No. 4500**

<table>
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<td>Account</td>
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<td>---------</td>
<td>-------------------------------------------------------</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Labor Management Advisory Council</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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### 77—Interstate Mining Compact Commission

**Acct. No. 4510**

<table>
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<tr>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
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### 78—Department of Mines

**Acct. No. 4600**

<table>
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<th>Account</th>
<th>Description</th>
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</tr>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,862,232</td>
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<td>2</td>
<td>Current Expenses</td>
<td>$904,650</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$91,750</td>
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<tr>
<td>4</td>
<td>Special Mine Drainage Program</td>
<td>$0</td>
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<tr>
<td>5</td>
<td>Miner Training, Education and Certification</td>
<td>$151,629</td>
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<tr>
<td>6</td>
<td>Board of Coal Mine Health and Safety</td>
<td>$15,000</td>
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<tr>
<td>7</td>
<td>Unclassified</td>
<td>$188,100</td>
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<td>8</td>
<td>Total</td>
<td>$4,213,361</td>
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</table>

Any unexpended balance remaining in the appropriation for “Subsidence-Federal Matching” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

The above line item “Unclassified” shall be expended only for implementation of the provisions of Enrolled Senate Bill No. 385, 1979 Regular Session of the Legislature.

### 79—Ohio River Basin Commission

**Acct. No. 4690**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
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</thead>
<tbody>
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<td>1</td>
<td>Total</td>
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### 80—Council of State Governments

**Acct. No. 4720**

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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$31,800</td>
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</table>
81—Interstate Commission on Potomac River Basin

Acct. No. 4730

1 West Virginia’s contribution to Potomac River Basin Interstate Commission $12,450

82—Ohio River Valley Water Sanitation Commission

Acct. No. 4740

1 West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission $40,575

83—Southern Regional Education Board

Acct. No. 4750

1 West Virginia’s contribution to Southern Regional Education Board $64,000

3 To be expended upon requisition of the Governor.

84—West Virginia Air Pollution Control Commission

Acct. No. 4760

1 Personal Services $439,971

2 Current Expenses $151,662

3 Equipment $26,750

4 Total $618,383

85—Interstate Education Compact

Acct. No. 4770

1 West Virginia’s contribution to Interstate Education Compact $14,250

3 To be expended upon requisition of the Governor.

86—Southern Interstate Nuclear Board

Acct. No. 4780

1 West Virginia’s contribution to the Southern Interstate Nuclear Board $19,171

3 To be expended upon requisition of the Governor.
### Appropriations

#### 87—Department of Banking

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Allocation</th>
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</thead>
<tbody>
<tr>
<td>Acct. No. 4800</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td></td>
<td>$388,891</td>
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<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$182,075</td>
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<td>3 Equipment</td>
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<td><strong>4 Total</strong></td>
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<td><strong>$575,966</strong></td>
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#### 88—West Virginia State Aeronautics Commission

<table>
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<th>Account</th>
<th>Description</th>
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</tr>
</thead>
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<tr>
<td>Acct. No. 4850</td>
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</tr>
<tr>
<td>1 Personal Services</td>
<td></td>
<td>$53,083</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$21,985</td>
</tr>
<tr>
<td>3 Equipment</td>
<td></td>
<td>$2,000</td>
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<tr>
<td>4 Aerial Markers</td>
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<td>$5,000</td>
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<tr>
<td>5 Airport Matching Fund</td>
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<td>$1,250,000</td>
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<td>6 Civil Air Patrol Expenses</td>
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<td>$89,000</td>
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<tr>
<td><strong>7 Total</strong></td>
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<td><strong>$1,421,068</strong></td>
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</table>

#### 89—West Virginia Nonintoxicating Beer Commission

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 4900</td>
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<tr>
<td>1 Personal Services</td>
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<td>$281,303</td>
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<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$80,000</td>
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<td>3 Equipment</td>
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<td>$4,500</td>
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<td><strong>4 Total</strong></td>
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<td><strong>$365,803</strong></td>
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</table>

#### 90—West Virginia Racing Commission

<table>
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<th>Account</th>
<th>Description</th>
<th>Allocation</th>
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</thead>
<tbody>
<tr>
<td>Acct. No. 4950</td>
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<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td></td>
<td>$612,800</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
<td>$86,500</td>
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</table>
Ch. 1J

**APPROPRIATIONS**

3 Equipment ........................................... $5,000

4 Total .................................................. $704,300

**91—Department of Agriculture**

Acct. No. 5100

1 Salary of Commissioner .......................... $32,500
2 Other Personal Services ............................ $1,525,254
3 Current Expenses .................................... $769,195
4 Equipment ............................................ $92,000
5 Marijuana and Multiflora Rose Eradication Program .... $5,000
6

7 Total .................................................. $2,423,949

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

9 Any unexpended balance remaining in the appropriation for “Marijuana and Multiflora Rose Eradication Program” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

**92—Farm Management Commission**

Acct. No. 5110

1 Personal Services .................................... $827,588
2 Current Expenses ..................................... $812,099
3 Repairs and Alterations ......................... $270,000
4 Equipment ............................................ $407,065
5 Buildings and Alterations to Buildings ........ $0

6 Total .................................................. $2,316,752

**93—Department of Agriculture—Soil Conservation Committee**

Acct. No. 5120

1 Personal Services .................................... $261,888
<table>
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<tr>
<th></th>
<th>Description</th>
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</tr>
</thead>
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<tr>
<td>604</td>
<td>Appropriations</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>74,897</td>
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<td>3</td>
<td>Watershed Program</td>
<td>271,000</td>
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<td>4</td>
<td>Total</td>
<td>$607,785</td>
</tr>
<tr>
<td>5</td>
<td>Any unexpended balance remaining in the appropriation for “Watershed Program,” “Mud River Flood Control Project,” and “Channelization of Kelley’s Creek,” hereinafter redesignated as “Stream Channelization,” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.</td>
<td></td>
</tr>
</tbody>
</table>

94—Department of Agriculture—Division of Rural Resources (Matching Fund)

<table>
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<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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</thead>
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<tr>
<td>604</td>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Current Expenses</td>
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<tr>
<td>4</td>
<td>Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.</td>
<td></td>
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</table>

95—Department of Agriculture—Meat Inspection

<table>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>604</td>
<td>Appropriations</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Current Expenses</td>
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<td>Total</td>
<td>$428,732</td>
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<td>4</td>
<td>Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.</td>
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</tr>
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</table>

96—Department of Agriculture—Agricultural Awards

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>604</td>
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<td></td>
</tr>
<tr>
<td>1</td>
<td>Agricultural Awards</td>
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<tr>
<td>2</td>
<td>Fairs and Festivals</td>
<td>134,450</td>
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## Appropriations

### Conservation and Development

**97—Geological and Economic Survey**

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<td>Current Expenses</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$75,750</td>
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<td>4</td>
<td>Equipment</td>
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<td>5</td>
<td>Special Studies</td>
<td>$660,525</td>
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<td>6</td>
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**98—Department of Natural Resources**

<table>
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<th>Acct. No. 5650</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$7,138,721</td>
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<td>2</td>
<td>Current Expenses</td>
<td>$1,675,276</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$375,219</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$420,250</td>
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<tr>
<td>5</td>
<td>Clarke-McNary Fire Prevention</td>
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<tr>
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<td>Personal Services</td>
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<tr>
<td></td>
<td>Other Expenses</td>
<td>$56,350</td>
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<tr>
<td>6</td>
<td>Water Resources Board and Reclamation Board of Review</td>
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<td>Personal Services</td>
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<td></td>
<td>Other Expenses</td>
<td>$14,750</td>
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<tr>
<td>7</td>
<td>Implementation of Federal Surface Mine Legislation</td>
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<td></td>
<td>Personal Services</td>
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<tr>
<td></td>
<td>Other Expenses</td>
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<tr>
<td>8</td>
<td>Clean Water Act of 1977</td>
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<td>Personal Services</td>
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<tr>
<td></td>
<td>Other Expenses</td>
<td>$14,991</td>
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<tr>
<td>9</td>
<td>Repairs, Replacement of Equipment and Furnishings on Existing Facilities</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
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<tr>
<td>10</td>
<td>Debt Service</td>
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<tr>
<td>11</td>
<td>Special Works Program</td>
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<tr>
<td>Appropriations</td>
<td>[Ch. 1]</td>
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<tr>
<td>----------------</td>
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<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>308,000</td>
<td></td>
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<tr>
<td>Other Expenses</td>
<td>42,000</td>
<td></td>
</tr>
<tr>
<td>15 Cass Scenic Railroad</td>
<td></td>
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</tr>
<tr>
<td>(Operation)</td>
<td>85,600</td>
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<tr>
<td>Personal Services</td>
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<tr>
<td>Other Expenses</td>
<td>1,727</td>
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</tr>
<tr>
<td>17 Castleman's Run Lake, Brooke County, Improvement Survey</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>19 Big Ugly Public Hunting Grounds (Capital Improvements)</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>21 Total</td>
<td>$12,500,066</td>
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</table>


The balance remaining in the above appropriation for “Area Improvements—Berwind Lake Public Hunting and Fishing Area,” as reappropriated for expenditure in fiscal year 1979-80, is hereby redesignated as to purpose and is to be expended for “Improvements and Land Acquisition—Berwind Lake Public Hunting and Fishing Area.”
Any or all funds appropriated for "Clarke-McNary Fire Prevention" may be transferred to Special Revenue Fund to match and aid federal funds.


99—Public Land Corporation

Acct. No. 5660

Any unexpended balance remaining in the appropriations for "Public Land Corporation," "Blennerhasset Island," and "National Track and Field Hall of Fame" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

The appropriation for "National Track and Field Hall of Fame," as designated in Chapter 8, Acts of the Legislature, First Extraordinary Session, 1975 is hereby redesignated as follows: The purpose of this bill is to provide state general revenue moneys to match federal funds, county funds, municipal funds, board of education funds, or any combination thereof, for the establishment of the "National Track and Field Hall of Fame". Such moneys may be transferred to a special fund to match and aid federal funds or other of the aforesaid funds and for disbursement therefrom.

100—Water Development Authority

Acct. No. 5670

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
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<td>Current Expenses</td>
<td>$43,569</td>
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<tr>
<td>Capital Outlay</td>
<td>$4,000,000</td>
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<tr>
<td>Total</td>
<td>$4,169,333</td>
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Any unexpended balance remaining in the appropriation for "Capital Outlay" and "Phase III Hardship Grants" at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.
101—West Virginia Railroad Maintenance Authority

Acct. No. 5690

1 Personal Services ........................................ $ 84,538
2 Current Expenses ............................................ 66,270
3 Repairs and Alterations ..................................... 0
4 Equipment ...................................................... 1,000
5 South Branch Valley Railroad
   (Unclassified) ............................................. 140,000
6 South Branch Valley Railroad
   (Bridge Renovation and Shop Construction) .............. 360,000

Total ........................................................ $ 651,808

The moneys appropriated in the items in this account for “South Branch Valley Railroad” purposes may be transferred to special revenue account No. 8344 for expenditure and disbursement therefrom.

Any unexpended balance remaining in the appropriation for “South Branch and Greenbrier Line Subdivision” at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during the fiscal year 1979-80.

PROTECTION

102—Department of Public Safety

Acct. No. 5700

1 Personal Services ........................................ $ 11,289,237
2 Current Expenses ........................................... 4,478,058
3 Repairs and Alterations .................................... 244,000
4 Equipment ..................................................... 1,597,992
5 Emergency Fund ............................................... 10,000

Total ......................................................... $ 17,619,287

103—Adjutant General—State Militia

Acct. No. 5800

1 Personal Services ........................................ $ 192,596
**Appropriations**

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
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<td>3 Repairs and Alterations</td>
<td>34,000</td>
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<tr>
<td>4 Equipment</td>
<td>16,700</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>102,035</td>
</tr>
<tr>
<td>6 Property Maintenance</td>
<td>627,300</td>
</tr>
<tr>
<td>8 State Armory Board</td>
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<tr>
<td>9 College Education Fund</td>
<td>150,000</td>
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<tr>
<td>10 Total</td>
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**Miscellaneous Boards and Commissions**

104—*West Virginia Civil Service System*

**Acct. No. 5840**

<table>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$627,237</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>275,250</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>7,000</td>
</tr>
<tr>
<td>4 Employee Classification</td>
<td>64,584</td>
</tr>
<tr>
<td>5 Total</td>
<td>$974,071</td>
</tr>
</tbody>
</table>

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

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

105—*West Virginia State Board of Land Surveyors*

**Acct. No. 5850**

1 To pay the per diem of members and
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>other general expenses</td>
<td>$14,000</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>From Collections</td>
<td>$14,000</td>
<td></td>
</tr>
</tbody>
</table>

106—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 |

107—West Virginia Board of Examiners for Practical Nurses

Acct. No. 5870

| 1 | To pay the per diem of members and |
| 2 | other general expenses | $76,000 |
| 3 | From Collections | $76,000 |

108—State Board of Chiropractic Examiners

Acct. No. 5880

| 1 | To pay the per diem of members and |
| 2 | other general expenses | $3,775 |
| 3 | From Collections | $3,775 |

109—State Board of Pharmacy

Acct. No. 5900

| 1 | To pay the per diem of members and |
| 2 | other general expenses | $62,000 |
| 3 | From Collections | $62,000 |

110—State Board of Osteopathy

Acct. No. 5910

| 1 | To pay the per diem of members and |
| 2 | other general expenses | $6,000 |
| 3 | From Collections | $6,000 |

111—State Board of Embalmers and Funeral Directors

Acct. No. 5930

| 1 | To pay the per diem of members and |
2 other general expenses .......................... $ 36,710
3 From Collections ................................. 36,710

112—State Board of Registration for Professional Engineers
Acct. No. 5940
1 To pay the per diem of members and
2 other general expenses .......................... $ 107,600
3 From Collections ................................. 107,600

113—State Board of Architects
Acct. No. 5950
1 To pay the per diem of members and
2 other general expenses .......................... $ 14,000
3 From Collections ................................. 14,000

114—State Veterinary Board
Acct. No. 5960
1 To pay the per diem of members and
2 other general expenses .......................... $ 3,500
3 From Collections ................................. 3,500

115—Human Rights Commission
Acct. No. 5980
1 Personal Services ............................... $ 268,035
2 Current Expenses ................................. 147,675
3 Equipment ........................................ 9,000

4 Total .............................................. $ 424,710

116—West Virginia State Board of Sanitarians
Acct. No. 5990
1 To pay the per diem of members and other
2 general expenses ................................. $ 1,510
3 From Collections ................................. 1,510
### Appropriations

**117—Women’s Commission**

Acct. No. 6000

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$17,120</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Total</strong></td>
<td><strong>$27,120</strong></td>
</tr>
</tbody>
</table>

**118—West Virginia Public Employees Retirement Board**

Acct. No. 6140

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employers Accumulation Fund</td>
<td>$9,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Expense Fund</td>
<td>$125,000</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Total</strong></td>
<td><strong>$9,125,000</strong></td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of West Virginia Public Employees Retirement coverage for those departments operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balance in the various Special Revenue Funds in excess of specific appropriations.

**119—West Virginia Public Employees Insurance Board**

Acct. No. 6150

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Expense Fund</td>
<td>$113,000</td>
</tr>
<tr>
<td>2</td>
<td>Public Employees Health Insurance—State Contribution</td>
<td>$29,799,364</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Total</strong></td>
<td><strong>$29,912,364</strong></td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of Public Employees Health Insurance costs for those Spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Com-
mission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the Public Employees Health Insurance cost for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

120—Insurance Commissioner

Acct. No. 6160

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$570,800</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$148,790</td>
</tr>
<tr>
<td>Equipment</td>
<td>$9,700</td>
</tr>
<tr>
<td>Total</td>
<td>$729,290</td>
</tr>
</tbody>
</table>

121—State Fire Commission

Acct. No. 6170

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$444,695</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$174,453</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$3,050</td>
</tr>
<tr>
<td>Equipment</td>
<td>$19,916</td>
</tr>
<tr>
<td>Total</td>
<td>$642,114</td>
</tr>
</tbody>
</table>

ROADS AND HIGHWAYS

122—State Department of Highways

Acct. No. 6410

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$59,000,000</td>
</tr>
</tbody>
</table>

Any or all of the above appropriations may be transferred to the State Road Fund for distribution.

Sec. 2.—Appropriations from other funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty.
123—State Department of Highways
Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maintenance Expressway, Trunkline and Feeder</td>
<td>$67,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Maintenance State Local Services and State Toll Bridges (elimination of tolls)</td>
<td>69,200,000</td>
</tr>
<tr>
<td>3</td>
<td>Inventory Revolving</td>
<td>1,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment Revolving</td>
<td>9,000,000</td>
</tr>
<tr>
<td>5</td>
<td>General Operations</td>
<td>19,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Debt Service</td>
<td>81,800,000</td>
</tr>
<tr>
<td>7</td>
<td>Interstate Construction</td>
<td>173,911,000</td>
</tr>
<tr>
<td>8</td>
<td>Other Federal Aid Programs</td>
<td>103,417,000</td>
</tr>
<tr>
<td>9</td>
<td>Appalachian Program</td>
<td>69,282,000</td>
</tr>
<tr>
<td>10</td>
<td>Nonfederal Aid Construction</td>
<td>56,067,740</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$649,677,740</td>
</tr>
</tbody>
</table>

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

The State Commissioner of Highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Chapter 14, Article 2, Sections 17 and 18, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

124—Department of Motor Vehicles
Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,651,920</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$407,308</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$98,962</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,500</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$20,592</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$37,971</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$24,181</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$592,514</td>
</tr>
</tbody>
</table>

126—Department of Education—Veterans Education

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$157,443</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$48,582</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$206,025</td>
</tr>
</tbody>
</table>

Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government.

Federal Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Governor for any emergency which might arise in the operation of this Division during the fiscal year.
### 127—Treasurer's Office—Abandoned and Unclaimed Property

**Acct. No. 8000**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$43,204</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$30,179</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$73,383</strong></td>
</tr>
</tbody>
</table>

### 128—Real Estate Commission

**Acct. No. 8010**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$93,231</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$37,105</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,650</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$5,700</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$8,856</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$4,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$153,542</strong></td>
</tr>
</tbody>
</table>

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

### 129—West Virginia Racing Commission

**Acct. No. 8080**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

2. The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.

5. No expenditures shall be made from this account expect for hospitalization, medical care, and/or funeral expenses for persons contributing to this fund.
130—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 from
3  Special Revenue Fund out of fees and collections as pro-
4  vided by law.

131—Department of Finance and Administration—
Division of Purchasing—Revolving Fund

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1  Personal Services ....................................................... $ 605,252
2  Current Expenses ..................................................... 177,625
3  Equipment ................................................................. 38,500
4  Social Security Matching ........................................... 36,788
5  Public Employees Retirement Matching ..................... 57,768
6  Public Employees Health Insurance ........................... 38,000

7  Total ............................................................................... $ 953,933
8  The total amount of this appropriation shall be paid from
9  Special Revenue Fund as provided by Chapter 5A, Article
10  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 to
14  the above appropriation, the necessary amount for the pur-
15  chase of supplies for resale.

132—Department of Finance and Administration—
Information Systems Service Division Fund

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1  Personal Services ....................................................... $ 3,756,807
2  Current Expenses ..................................................... 6,408,245
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment</td>
<td>157,910</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>231,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>356,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>217,950</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$11,127,912</strong></td>
</tr>
</tbody>
</table>

8. **The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Finance and Administration as provided by law.**

#### 133—Department of Agriculture

**Acct. No. 8180**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$306,352</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>27,455</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>20,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>32,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>16,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$401,807</strong></td>
</tr>
</tbody>
</table>

7. **The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agriculture as provided by law.**

#### 134—State Committee of Barbers and Beauticians

**Acct. No. 8220**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$95,908</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>49,825</td>
</tr>
<tr>
<td>Equipment</td>
<td>1,200</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>5,800</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>8,446</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>7,903</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$169,082</strong></td>
</tr>
</tbody>
</table>

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

135—Public Service Commission

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Commissioners</td>
<td>$77,900</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$2,245,003</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$668,575</td>
</tr>
<tr>
<td>Equipment</td>
<td>$70,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$142,008</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$229,827</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$98,977</td>
</tr>
<tr>
<td>Total</td>
<td>$3,532,290</td>
</tr>
</tbody>
</table>

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

12 Out of the above appropriation $5,000 may be transferred
13 to the State Water Resources Commission of the Department of
14 Natural Resources for use in cooperation with the U. S. Geo-
15 logical Survey in a program of stream gauging.

136—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$138,952</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$68,900</td>
</tr>
<tr>
<td>Equipment</td>
<td>$3,500</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$6,700</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$13,200</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$5,700</td>
</tr>
<tr>
<td>Total</td>
<td>$236,952</td>
</tr>
</tbody>
</table>

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

137—Public Service Commission—Motor Carrier Division

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$774,684</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$317,250</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$7,500</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$48,200</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$72,225</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$42,650</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$1,262,509</td>
</tr>
</tbody>
</table>

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

138—Department of Natural Resources

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,633,508</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$729,367</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$152,800</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$146,464</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
<td>$160,050</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching</td>
<td>$250,950</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Health Insurance</td>
<td>$170,000</td>
</tr>
<tr>
<td>8</td>
<td>Land Purchase and Buildings</td>
<td>$480,000</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$4,723,139</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and
Ch. 1] APPROPRIATIONS 621

14 Special Funds collected at state parks. Any unexpended balances remaining in the prior appropriation item “Land Purchase and Buildings” at the close of fiscal year 1978-79 and available for capital improvements and land purchase purposes are hereby appropriated for expenditure in fiscal year 1979-80 all in accordance with Chapter 20, Article 2, Section 34, Code of West Virginia.

139—Department of Public Safety—Inspection Fees

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
</tr>
</tbody>
</table>

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

140—Board of Regents—West Virginia University—Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$535,942</td>
</tr>
</tbody>
</table>

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

5 Any unexpended balances remaining in the appropriations for “Creative Arts, Utilities, Roads and Parking” at the close of the fiscal year 1978-79 are hereby reappropriated for expenditure during fiscal year 1979-80.
141—Board of Regents—State System
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Debt Service Reserve ........ $ 2,268,485
2 Miscellaneous Campus Development Projects .... 1,310,478
3 Capital Building and Land Improvements ...... 2,000,000

This appropriation is to be used by the Board of Regents at all state institutions of higher education under their supervision for capital building improvements, alterations and ground improvements.

9 West Virginia Institute of Technology, Campus Improvement

10 Excavation behind Old Main to provide 100-plus parking spaces. 650,000

13 Potomac State College, Campus Improvement
14 Reroof Administration Building and Gymnasium, renovate electrical and plumbing—Science Hall. 450,000

17 Marshall University, Campus Development
18 Design fees for addition to Basic Sciences Building, relocate tennis courts, and property purchase. 1,050,000

21 West Virginia University, Campus Development
22 Implement power management system—down-town campus, planning and preliminary design fees for Mineral and Energy Building, Business and Commerce Building, and Creative Arts addition. 2,215,000

27 West Virginia Northern Community College, Campus Development
28 Academic Building—Weirton Campus. 1,000,000

30 West Virginia State College, Campus Development

32 Renovate Administration Building. 650,000

The above projects are listed in a stated order of priority.

Projects are to be paid on a cash basis and made available
from date of passage. It is intended that only complete and usable projects be constructed and then only in the listed order of priority: Provided, however, That whenever the amount in the special capital improvement fund shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them or any one or more, may be undertaken as soon as plans can be prepared and contracts let therefor.

The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1971 Legislature.

Any unexpended balances remaining in prior years and in the 1978-79 appropriation are hereby reappropriated for expenditure during fiscal year 1979-80.

142—Board of Regents—Special Capital Improvement Fund

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ................................................ $ 1,676,548

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

5 Any unexpended balances remaining in prior years and 6 1978-79 appropriations are hereby reappropriated for expenditure during fiscal year 1979-80

143—Board of Regents—Capital Improvement Fund

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and 2 1978-79 appropriations are hereby reappropriated for expenditure during the fiscal year 1979-80.
### 144—Board of Regents—Special Capital Improvement Fund

Acct. No. 8855

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$4,619,616</td>
</tr>
<tr>
<td>Computer Network</td>
<td>$4,072,000</td>
</tr>
<tr>
<td>Major items of equipment for system-wide network.</td>
<td></td>
</tr>
<tr>
<td>Shepherd College</td>
<td>$400,000</td>
</tr>
<tr>
<td>Replace heating plant in Physical Education Building, make required fire-safety corrections in Home Economics Building.</td>
<td></td>
</tr>
<tr>
<td>West Liberty State College</td>
<td>$100,000</td>
</tr>
<tr>
<td>Replace boiler in Health and Physical Education Building, make required campus-wide fire-safety corrections.</td>
<td></td>
</tr>
<tr>
<td>West Virginia University</td>
<td>$1,325,000</td>
</tr>
<tr>
<td>Upgrade fire alarm system in Hospital and Basic Sciences Building.</td>
<td></td>
</tr>
<tr>
<td>West Virginia Institute of Technology</td>
<td>$1,950,000</td>
</tr>
<tr>
<td>Addition to Engineering Building.</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$12,466,616</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1977 Legislature.

Any unexpended balance remaining in prior years and in the 1978-79 appropriation are hereby reappropriated for expenditure in fiscal year 1979-80.

### 145—Board of Regents—Certain Capital Improvements

Acct. No. 8860

**TO BE PAID FROM SPECIAL REVENUE FUND**

1. Any unexpended balances remaining in this account at the close of the fiscal year 1978-79 is hereby reappropriated for expenditure during fiscal year 1979-80.
146—Workmen's Compensation Commission

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services ........................................ $ 3,424,000
2 Current Expenses ........................................ 2,728,492
3 Equipment .................................................. 83,200
4 Social Security Matching .................................. 222,560
5 Public Employees Retirement Matching .............. 325,280
6 Public Employees Health Insurance ................... 169,675

Total ................................................................ $ 6,953,207

There is hereby authorized to be paid out of the above appropriation for “Current Expenses” the amount necessary for the premiums on bonds given by the State Treasurer as Bond Custodian for the protection of the Workmen's Compensation Fund. This sum shall be transferred to the Board of Insurance.

147—West Virginia Alcohol Beverage Control Commission

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner ....................................... $ 30,000
2 Other Personal Services ....................................... 7,685,125
3 Current Expenses ............................................ 3,904,368
4 Repairs and Alterations ........................................ 50,500
5 Equipment ........................................................ 212,000
6 Social Security Matching ..................................... 472,635
7 Public Employees Retirement Matching .............. 730,000
8 Public Employees Health Insurance ................... 640,000

Total ................................................................ $ 13,724,628

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

The above appropriations include the salaries of store personnel, store inspectors, store operating expenses and equip-
ment; and salaries, expenses and equipment of administration offices.

There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for the purchase of liquor, as provided by law.

148—West Virginia University—Medical School

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$32,952,607</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$20,096,650</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,551,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,254,928</td>
</tr>
<tr>
<td>Intern and Residency Support Program for Community Hospitals</td>
<td>$882,750</td>
</tr>
<tr>
<td>Family Practice Residency Support Program</td>
<td>$706,407</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$58,444,842</strong></td>
</tr>
</tbody>
</table>

Sec. 3.—Awards for claims against the state.—From the funds designated there are hereby appropriated for the remainder of the fiscal year 1978-79 and to remain in effect until June 30, 1980 for payment of claims against the state, the following amounts as itemized:

(a) Claims against the Board of Regents:

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbot Laboratories</td>
<td>$637.72</td>
</tr>
<tr>
<td>Ace Glass, Inc.</td>
<td>$71.49</td>
</tr>
<tr>
<td>Air Products and Chemicals, Inc.</td>
<td>$204.37</td>
</tr>
<tr>
<td>The C &amp; P Telephone Company of W. Va.</td>
<td>$144.34</td>
</tr>
<tr>
<td>Central States Resources, Inc.</td>
<td>$17,356.03</td>
</tr>
<tr>
<td>Climate Makers of Charleston, Inc.</td>
<td>$903.00</td>
</tr>
<tr>
<td>The Crocker-Fells Company</td>
<td>$560.86</td>
</tr>
<tr>
<td>Cutter Laboratories, Inc.</td>
<td>$1,248.00</td>
</tr>
<tr>
<td>Lillian Dalessio</td>
<td>$300.00</td>
</tr>
<tr>
<td>Diagnostic Isotopes, Inc.</td>
<td>$81.60</td>
</tr>
<tr>
<td>Ehrenreich Photo-Optical Ind. Inc.</td>
<td>$388.95</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
</tr>
<tr>
<td>20</td>
<td>Fairmont Supply Company</td>
</tr>
<tr>
<td>21</td>
<td>Hubbard Pump Co.</td>
</tr>
<tr>
<td>22</td>
<td>Light Gallery and Supply Co.</td>
</tr>
<tr>
<td>23</td>
<td>Roche Laboratories, Inc.</td>
</tr>
<tr>
<td>24</td>
<td>State Farm Mutual Auto Insurance Co., subrogee of Dana Lee Selvig</td>
</tr>
<tr>
<td>25</td>
<td>Stuart's Drug &amp; Surgical Supply Co.</td>
</tr>
<tr>
<td>26</td>
<td>Syva, Inc.</td>
</tr>
<tr>
<td>27</td>
<td>Uarco, Inc.</td>
</tr>
<tr>
<td>28</td>
<td>Todd W. Ware and Taylor Publishing Co.</td>
</tr>
<tr>
<td>29</td>
<td>Warren Associates</td>
</tr>
<tr>
<td>30</td>
<td>John M. Weber</td>
</tr>
<tr>
<td>31</td>
<td>Capital Business Equipment, Inc.</td>
</tr>
</tbody>
</table>

(b) Claims against the Department of Corrections:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>Bernhardt's Clothing Inc.</td>
<td>$ 1,986.80</td>
</tr>
<tr>
<td>33</td>
<td>Davis Memorial Hospital</td>
<td>$ 3,233.19</td>
</tr>
<tr>
<td>34</td>
<td>Memorial General Hospital</td>
<td>$ 10,077.71</td>
</tr>
<tr>
<td>35</td>
<td>Positive Peer Culture, Inc.</td>
<td>$ 26,341.15</td>
</tr>
<tr>
<td>36</td>
<td>Albert K. Tyre</td>
<td>$ 178.10</td>
</tr>
<tr>
<td>37</td>
<td>Alling &amp; Cory</td>
<td>$ 4,401.40</td>
</tr>
<tr>
<td>38</td>
<td>IBM Corporation</td>
<td>$ 3,962.30</td>
</tr>
<tr>
<td>39</td>
<td>Physicians Fee Office</td>
<td>$ 2,956.50</td>
</tr>
</tbody>
</table>

(c) Claim against the Department of Employment Security:
(To be paid from Employment Security Fund)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Odlund Haney Spangler, Jr.</td>
<td>$ 88.50</td>
</tr>
</tbody>
</table>

(d) Claim against the Department of Finance and Administration:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Guyan Transfer and Sanitation, Inc.</td>
<td>$ 4,290.00</td>
</tr>
</tbody>
</table>

(e) Claims against the Department of Health:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>American Hospital Supply</td>
<td>$ 424.32</td>
</tr>
<tr>
<td>43</td>
<td>Carl L. Baker, Jr.</td>
<td>$ 6,450.01</td>
</tr>
<tr>
<td>#</td>
<td>Name</td>
<td>Amount</td>
</tr>
<tr>
<td>----</td>
<td>-------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>58</td>
<td>H. M. Curry</td>
<td>$6,273.89</td>
</tr>
<tr>
<td>59</td>
<td>Jack L. Rader</td>
<td>$4,907.41</td>
</tr>
<tr>
<td>60</td>
<td>Henry Elden &amp; Associates</td>
<td>$71,889.00</td>
</tr>
<tr>
<td>61</td>
<td>Charleston Area Medical Center, Inc.</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>62</td>
<td>Moore Business Forms, Inc.</td>
<td>$51.42</td>
</tr>
<tr>
<td>63</td>
<td>Orkin Exterminating, Inc.</td>
<td>$212.00</td>
</tr>
<tr>
<td>64</td>
<td>Silas C. Wiersma</td>
<td>$1,120.00</td>
</tr>
<tr>
<td>65</td>
<td>(f) Claims against the Department of Highways:</td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>(To be paid from State Road Fund)</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>William J. Adkins, Dorothy Marie Adkins, Armilda Wiley, and Dorothy Marie Adkins, as next friend of Mary Jane Adkins and Peggy Joyce Adkins</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>68</td>
<td>Jeffrey D. Bubar</td>
<td>$92.24</td>
</tr>
<tr>
<td>69</td>
<td>The C &amp; P Telephone Co. of W. Va.</td>
<td>$1,399.97</td>
</tr>
<tr>
<td>70</td>
<td>Claywood Park Public Service District</td>
<td>$162.50</td>
</tr>
<tr>
<td>71</td>
<td>Stanley N. Cosner</td>
<td>$246.00</td>
</tr>
<tr>
<td>72</td>
<td>B. H. Cottle and B. H. Cottle, Executor of the Estate of Lucy M. Cottle, deceased</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>73</td>
<td>James H. Curnutte, Jr. &amp; Deborah L. Curnutte</td>
<td>$4,604.73</td>
</tr>
<tr>
<td>74</td>
<td>Rush Fields</td>
<td>$1,142.18</td>
</tr>
<tr>
<td>75</td>
<td>A. M. Fredlock, II</td>
<td>$235.20</td>
</tr>
<tr>
<td>76</td>
<td>Teresa K. Gillispie &amp; Johnny Wayne Gillispie</td>
<td>$99.13</td>
</tr>
<tr>
<td>77</td>
<td>Charles R. Gore</td>
<td>$332.49</td>
</tr>
<tr>
<td>78</td>
<td>Halliburton Services</td>
<td>$228.56</td>
</tr>
<tr>
<td>79</td>
<td>Linda E. Hamilton</td>
<td>$92.00</td>
</tr>
<tr>
<td>80</td>
<td>Douglas Haney</td>
<td>$309.50</td>
</tr>
<tr>
<td>81</td>
<td>Howard A. Haynes</td>
<td>$300.19</td>
</tr>
<tr>
<td>82</td>
<td>Arnold G. Heater &amp; Geraldine Heater</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>83</td>
<td>Alvin O. Hunter</td>
<td>$223.00</td>
</tr>
<tr>
<td>84</td>
<td>R. L. Jarrell</td>
<td>$291.42</td>
</tr>
<tr>
<td>85</td>
<td>Peggy Keyser</td>
<td>$113.56</td>
</tr>
<tr>
<td>86</td>
<td>Forest Joe King</td>
<td>$11,000.00</td>
</tr>
</tbody>
</table>
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97  Forest Joe King, as father & next friend of Beverly King $2,500.00
98  Forest Joe King, as father & next friend of Denny Joe King $2,500.00
99  Patricia Ann King $20,000.00
100 Herman F. Lilly $1,200.00
101 Deloris J. Lively $98.88
102 Charles P. Long $43.76
103 Harold Mahaffee $94.24
104 Rhoda Raynett McIntyre $500.00
105 Morrison Printing Co. Inc. $3,000.00
106 Larry Roton $177.73
107 Mae Russell $700.00
108 James Ryan $800.00
109 Joyce Ryan $6,250.00
110 Robert Smith and Elizabeth Smith $4,000.00
111 A. A. Spagnuolo $480.00
112 Barbara H. Spitzer $300.00
113 Polly Stevens, Guardian of the Estate of James Walter Stevens and
    Timothy Stevens $8,450.00
114 Connie Ann Stone $176.73
115 Charles E. Taylor & Mary P. Taylor $1,566.75
116 Willard P. Teets, Attorney in Fact for
    Percy E. Teets $3,000.00
117 John Tillinghast & Janet Tillinghast $4,000.00
118 Vecellio & Grogan, Inc. $17,122.44
119 W. F. Webb $1,100.00
120 Patrick West $950.00
121 Loraine White & Velma White $1,000.00
122 (g) Claim against the Department of Motor Vehicles:
    (To be paid from State Road Fund)
    Wood County Bank $2,749.55
123 (h) Claims against the Department of Natural Resources:
    (To be paid from General Revenue Fund)
    The C & P Telephone Co. of W. Va. $442.36
    Henry Elden & Associates $4,000.00
136 Alice Marcum .................................. $ 2,171.00
137 McCloy Construction Company, Inc. .......... $ 27,000.00
138 Ostrin Electric Co. ................................ $ 997.50

(i) Claims against the Department of
Public Safety:
142 Richard L. Cunningham .......................... $ 290.00
143 Joseph Larry Garrett .............................. $ 290.56
144 Ora T. Herron ....................................... $ 18.00
145 Harry Glenn Lucas, Jr. ............................. $ 283.52
146 Lowell J. Maxey .................................... $ 259.20
147 The County Commission of Mason County .................................. $ 3,600.00
149 R. L. Smith, d/b/a Architectural Associates .................................. $ 879.91

(j) Claims against the Division of
Vocational Rehabilitation:
154 Icy Mae DeWeese ..................................... $ 202.50
155 Ethel Engegno ....................................... $ 4,989.22
156 Rondal Fury ......................................... $ 4,296.92
157 Ralph Keeling ....................................... $ 4,593.88
158 Paul Leach .......................................... $ 2,394.65
159 Ralph Parker ......................................... $ 2,070.77
160 Elva Petts ........................................... $ 3,985.42
161 Gertrude Preston .................................... $ 5,771.49
162 James Preston ....................................... $ 5,888.75
163 Private Diagnostic Clinic (Duke University Medical Center) ............... $ 399.18
165 Harry Wells .......................................... $ 3,423.80
166 Arthur White ........................................ $ 5,217.75

(k) Claims against the Governor’s Office—
Emergency Flood Disaster Relief:
170 Gladys Barfield .................................... $ 700.16
171 Thelma J. Stone .................................... $ 2,500.00
172 Patricia Wilson, George P. Wilson, and Gladys V. Wilson ............... $ 1,200.00
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174 Alert Sanitation ........................................ $ 2,350.00
175 Alex Ray .................................................. $ 1,175.00
176 Robert L. and Mae Massie ............................. $ 465.00

177 (1) Claim against the Public Service Commission:
(To be paid from Special Revenue Fund)
178 Transport Motor Express, Inc. ........................ $ 837.00

179 (m) Claim against the Treasurer's Office:
(To be paid from General Revenue Fund)
180 Patrick Plaza Dodge, Inc. ............................ $ 142.50

181 (n) Claims against the Secretary of State:
(To be paid from General Revenue Fund)
182 Eastman Kodak Co. ...................................... $ 275.00
183 Texaco, Inc. ............................................. $ 33.09

Sec. 4.—Reappropriations.—Any unexpended balances of
Items I, V, VI, VII, IX, X and XII in the appropriations
made by and under the authority of Sec. 4 of the 1972
Budget Act, and amended under Sec. 4 of the 1977 Budget
Act, are hereby reappropriated for expenditure during the
fiscal year 1979-80 with exception of the following accounts:
Item IX, Acct. Nos. 5651-28, 5651-32, 5651-34, 5651-37,
5651-38, 5651-42, 5651-43, 5651-45, 5651-49, 5651-50,
5651-51; and the unexpended balance in Line Item 26,
Item IX of the 1972 Budget Act is redesignated as to purpose
as follows:
“Upper Buffalo Fork (Marion County) Improvements, in-
cluding land acquisition, construction of dams, recreational
facilities and related facilities (Soil Conservation Service Cost
Participation is available).”

Any unexpended balances of Items I, III, IV, XI, XII,
XIV, XV, XVI, and XVII in the appropriations made by
and under the authority of Sec. 4 of the 1973 Budget Act
and amended under Sec. 4 of the 1977 Budget Act, are
hereby reappropriated for expenditure during the fiscal year
1979-80 with exception of the following accounts: Item
XV, Acct. Nos. 5651-61, 5651-62, 5651-64, 5651-65,
5651-66, 5651-68.
Any unexpended balances of Items I, III and IV in the appropriation made by and under Sec. 4 of the 1976 Budget Act are hereby reappropriated for expenditure during the fiscal year 1979-80.

1 Sec. 5.—Appropriations from revenue sharing trust fund.
2 —The following items are hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1979-80.

149—Revenue Sharing Trust Fund—Department of Highways

Acct. No. 9705

1 Maintenance State Local Services $ 19,000,000
2 Full Design Report Study, Beckley
3 By-Pass Toll Facilities 125,000

150—Revenue Sharing Trust Fund—State Health Department

Acct. No. 9715

1 Region III Community Mental Health and Training Center -
2 Construction $ 1,000,000
3 Colin Anderson—Capital Outlay 700,000

151—Revenue Sharing Trust Fund—West Virginia Penitentiary

Acct. No. 9718

1 New Locking System $ 366,000

152—Revenue Sharing Trust Fund—Governor’s Office

Acct. No. 9721

1 Partnership Grants $ 3,500,000
2 Partnership Grants—Volunteer
3 Fire Departments 1,000,000
4 Partnership Grants—Wyoming
5 County Multipurpose Facility 1,250,000
153—Revenue Sharing Trust Fund
Department of Natural Resources

Acct. No. 9725

1 Equipment Replacement $300,000
2 Water and Sewer renovation $400,000
3 Cass—Water and Sewer—Town
4 Preservation $1,100,000
5 Watters Smith—Activities Building
6 and Picnic Area $250,000
7 Beech Fork—Improvements & Park
8 Development $200,000

154—Revenue Sharing Trust Fund
Department of Finance and Administration

Acct. No. 9740

1 T.R.I.P. $1,000,000
2 Lease—Purchase—Airplane $300,000

155—Revenue Sharing Trust Fund
Water Development Authority

Acct. No. 9743

1 Hardship Grants—Phase III $3,000,000

156—Revenue Sharing Trust Fund
Farm Management Commission

Acct. No. 9771

1 Barboursville State Farm Recreation
2 Facilities $100,000

Sec. 6.—Appropriations from countercyclical fiscal assistance trust fund.—Moneys received by the State of West Virginia pursuant to the provisions of the “Public Works Employment Act of 1976; Title II of Public Law 94-369”, as amended by the “Intergovernmental Antirecession Assistance Act of 1977; Public Law 95-30”, enacted by the Congress of the United States, shall be deposited in the state treasury and kept in a separate account entitled “Countercyclical Fiscal Assistance Trust Fund”.
Any part of or all such amounts as deposited, including deposits through fiscal year one thousand nine hundred eighty, are hereby appropriated and may be transferred to any other accounts in the Governor's Office or to any other departments of state government for disbursement or expenditure.

Sec. 7.—Reappropriations—Revenue Sharing Trust Fund. Any unexpended balances to the appropriations made by and under Sec. 8, of the 1973 Budget Act and Supplementary Acts to Chapter 10, acts of the Legislature, Regular Session 1973, under Sec. 5 of the 1974 Budget Act, and Supplementary Acts to Chapter Two, acts of the Legislature, Regular Session 1975, under Sec. 7, acts of the Legislature, Regular Session 1976 and Supplementary acts to Chapter 7, acts of the Legislature, Regular Session 1976, and as amended in Sec. 7 of the 1977 Budget Act, at the close of the fiscal year 1978-1979 are hereby reappropriated for expenditure during the fiscal year 1979-80, with exception of the following accounts: Acct. Nos. 9725-17, 9725-19, 9725-28, 9725-37, 9725-39, 9719-06, 9719-07, 9736-06.

Any unexpended balance made by and under the provisions of Sec. 5 of the 1979 Budget Act in the appropriation—“Acct. No. 9715—Pinecrest State Hospital” is hereby redesignated to the purpose: “Pinecrest State Hospital—repair, renovation and equipment of existing facility.”

Sec. 8.—Special revenue appropriations. There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of Chapter 12, Article 2, Section 2 of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, that none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, and Chapter 5A, Article 2, of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:
(a) An estimate of the amount and sources of all revenues accruing to such fund.

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

Sec. 9.—State improvement fund appropriations.—Bequests or donations of nonpublic funds received by the Governor on behalf of the State during the fiscal year one thousand nine hundred eighty for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated “State Improvement Fund.”

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

Sec. 10.—Specific funds and collection accounts.—A fund or collection account, which by law is dedicated to a specific use, is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of Chapter 12, Article 3 of the Code of West Virginia.

Sec. 11.—Appropriation for refunding erroneous payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into it which was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.
Sec. 12.—Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the state sinking fund commission as provided by Chapter 31, Article 18, Section 20b of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, or in the funds of the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligations bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for these purposes.

The state sinking fund commission shall reimburse the State of West Virginia through the governor from the first remittance collected from the West Virginia Housing Development Fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for the security or payment of which the advance was made.

Sec. 13.—Appropriations from taxes and license fees. —There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half percent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the tax commissioner through the state treasury out of gross collections.

There is hereby appropriated from the cigarette tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed one and one-half percent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the tax commissioner through the state treasury out of the gross collections.

Sec. 14.—Appropriations to pay costs of publication of delinquent corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise ap-
appropriated, to be paid upon requisitions of the auditor and/or
the governor, as the case may be, a sum sufficient to pay the
cost of publication of delinquent corporations as provided by
Chapter 11, Article 12, Sections 84 and 86 of the Code of
West Virginia.

Sec. 15.—Appropriations for local governments.—There
is hereby appropriated for payment to counties, districts, and
municipal corporations such amounts as will be necessary to
pay taxes due counties, districts, and municipal corporations
and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16.—Total Appropriations.—Where only a total sum
is appropriated to a spending unit, that total sum shall include
personal services, current expenses and capital outlay, except
as otherwise provided in Title 1, Sec. 3.

Sec. 17.—General school fund.—The balance of the pro-
cceeds of the general school fund remaining after the payment
of the appropriations made by this act is appropriated for
expenditure in accordance with Chapter 18, Article 9A, Sec-
tion 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

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

Where former spending units have been absorbed by or
combined with other spending units by acts of this Legisla-
ture, it is the intent of this act that reappropriation shall be
to the succeeding or later spending unit created unless other-
wise indicated.
Sec. 2.—Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not effect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.
RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 1
(By Mr. Davis, Mr. Gainer and Mr. Moreland)

[Adopted April 11, 1979]

Urging the Congress of the United States and the President of the United States to designate West Virginia as the site of the proposed experimental coal liquefaction plant.

WHEREAS, The State of West Virginia has abundant coal reserves which are not presently being mined; and

WHEREAS, The people of West Virginia are dependent to a great extent on the mining of coal for their livelihood and their economic well-being; and

WHEREAS, The people of West Virginia have demonstrated their technical proficiency and their willingness to mine coal over the course of several generations; and

WHEREAS, The nation has an urgent and immediate need for the development of alternative sources of energy to replace the dwindling world supply of crude oil; and

WHEREAS, The estimated cost of converting coal to commercially usable gas and oil compares favorably with the current price of imported crude oil; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress and the President of the United States are hereby urged to appropriate and to authorize funds necessary to construct an experimental coal liquefaction plant in the State of West Virginia; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the President of the United States and to West Virginia's representatives in the Congress.

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HOUSE RESOLUTION NO. 6

(By Mr. Speaker, Mr. See)

[Adopted April 11, 1979]

Directing the Committee on Rules, Committee on Finance and Committee on the Judiciary to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty.

WHEREAS, The House of Delegates has by rule created standing committees, including the Committee on Rules, the Committee on Finance and the Committee on the Judiciary; and

WHEREAS, The Joint Committee on Government and Finance on its own motion has directed, and may direct, that certain matters of government and finance should be studied and surveyed by joint standing committees or joint subcommittees of such joint standing committees, to be composed of certain standing committees of the respective houses, or subcommittees thereof; and

WHEREAS, It is appropriate to authorize the Committee on Rules, the Committee on Finance and the Committee on the Judiciary to sit between regular sessions; therefore, be it

Resolved by the House of Delegates:

That the Committee on Rules, the Committee on Finance and the Committee on the Judiciary of the House of Delegates, created by Rule 77 of the Rules of the House of Delegates, be and they each are hereby directed to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty, at such times and places as the Speaker of the House of Delegates shall direct; and, be it

Further Resolved, That in accordance with section one-a, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the Clerk of the House of Delegates is hereby authorized to draw his requisitions upon the Auditor for travel expenses of members of the House of Delegates serving on such committees or subcommittees as authorized, from time to time,
by the Committee on Rules and for the payment of staff, as directed, from time to time, by the Speaker; and, be it

Further Resolved, That the authority of this resolution shall be in addition to the authority for meetings of joint standing committees or joint subcommittees thereof under the supervision of the Joint Committee on Government and Finance pursuant to subsections (b) and (c), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1979

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### USURY:

See Regulation of Trade.

### VETERANS:

#### National cemetery

- Establishment of new or expansion of existing Department of Veterans' Affairs
- Acquisition of land by

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#### State cemetery

- Department of Veterans' Affairs
- Empowered to establish and maintain
- Formulation of rules and regulations
- Interment

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### VITAL STATISTICS:

#### Birth registration

- Certificate
  - Copy to county clerk
  - District of occurrence of birth
  - Filing of certificate
  - District of residence of mother
  - Filing of certificate
  - General requirements

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(See Code §21-5-1,2)

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WILLOW ISLAND:

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WORKMEN'S COMPENSATION:

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