FOREWORD

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

First Regular Session, 1981

The first regular session of the 65th Legislature convened on January 14, 1981, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 4th day of November, 1980, all as prescribed by Section 18, Article VI, of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on certain other matters incident to organization, took an adjournment until February 11, 1981, as provided by the aforesaid section of the Constitution. Reconvening on February 11, 1981, pursuant to the adjournment, the constitutional 60-day limit on the duration of the session being at midnight April 11, 1981, sine die adjournment came on April 14, 1981.

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

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

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

First Extraordinary Session

1981


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

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

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

Second Extraordinary Session

1981

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

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

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

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

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

C. A. BLANKENSHP, Clerk
House of Delegates.
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REGULAR SESSION, 1981

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

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* Appointed a member of the House of Delegates December 15, 1981, to fill the vacancy created by the resignation of Delegate-elect George W. Dober.
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| (D) Democrats |                         | 78               |
| (R) Republicans|                        | 22               |
|               | Total                    | 100              |
# MEMBERS OF THE SENATE

## REGULAR SESSION, 1981

### OFFICERS

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

## Districts and Members

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- **x** Appointed a member of the Senate on December 5, 1980, to fill the vacancy created by the death of the Honorable Judith A. Herndon.
- ***Elected in 1976.** All others elected in 1980.

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

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STANDING COMMITTEES OF THE
HOUSE OF DElegates
1981

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Welfare

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

Industry and Labor

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

Interstate Cooperation

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

Judiciary

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

Political Subdivisions

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

Roads and Transportation

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

Rules

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

See (Chairman ex officio), Tompkins and Teets.

Legislative Rule-Making Review Committee

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

SELECT COMMITTEE

Redistricting

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

COMMISSION ON SPECIAL INVESTIGATIONS

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

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

Banking and Insurance

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

Confirmations

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

Education

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

Elections

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

Energy, Industry and Mining

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

Finance

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

Health

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

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Interstate Cooperation

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

Judiciary

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

Labor

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

Local Government

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

Military

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

Natural Resources

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

Public Institutions

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

Rules

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

Transportation

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

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

Government and Finance

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

Joint Rules

McGraw (Chairman ex officio), Moreland and Deem.

Legislative Rule-Making Review

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

COMMISSION ON SPECIAL INVESTIGATIONS

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

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

1 After a civil action is commenced, the running of any statute of limitation shall be tolled for, and only for, the pendency of that civil action as to any claim which has been or may be asserted therein by counterclaim, whether compulsory or permissive, cross-claim or third-party complaint: Provided,

2 That if any such permissive counterclaim would be barred but for the provisions of this section, such permissive counter-claim may be asserted only in the action tolling the statute
of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

CHAPTER 2

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. RECOVERY OF PERSONAL PROPERTY.

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

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

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

1 If the plaintiff in a civil action, whether in a circuit court or magistrate court, for the recovery of specific goods, chattels, or intangible personal property, shall demand immediate possession thereof, a prejudgment hearing shall be held in not less than five nor more than ten days after service upon the defendant of the summons, a verified complaint describing said personal property, and a notice of the time, place, and purpose of the prejudgment hearing. At the prejudgment hearing an inquiry shall be held to determine:
(a) the nature of the right or contract under which the plaintiff claims a right to immediate possession; and (b) the nature of the defendant's right to retain possession thereof.

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

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

CHAPTER 3

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

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

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

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

ARTICLE 7A. LIABILITY OF PARENTS.

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

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

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

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

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

The custodial parent or parents of any minor shall be personally liable in an amount not to exceed twenty-five hundred dollars for damages which are the proximate result of any one or a combination of the following acts of such minor:
(a) The malicious and willful injury to the person of another; or

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

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

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

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

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

The provisions of this article shall be applicable to causes of action arising on and after the effective date of this article. Causes of actions arising before the effective date of this article and proceedings thereon shall be governed by the
previously enacted provisions of this article in force at the
time such cause arose.

CHAPTER 4

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PUBLIC MARKETS.


A public market is (1) any place of business where livestock, poultry, and other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold, or offered for sale, by any method including, but not limited to, public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times: Provided, That sales totally sponsored, organized and financed by the state of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity, shall not be included in this definition. Annual sales held by nonprofit associations or nonprofit corporations devoted to improving the quality of beef cattle raised in this state where the net proceeds from such sales are used exclusively for the association or corpora-
tion conducting such sale, or purebred livestock sales conducted
by generally recognized breed associations, shall not be sub-
ject to the provisions of sections eight and sixteen-a of this
article: Provided, however, That only members in good stand-
ing in such nonprofit association or nonprofit corporation or
such breed association shall offer cattle for sale at such annual
sale and the bylaws of such association or corporation or such
breed association shall provide either for a surety bond to be
given as provided in this article or that each member offering
stock at such sale shall bear any loss in proportion to the value
of each member's stock to the total value of all such stock
being sold at such sale.

CHAPTER 5
(S. B. 195—By Mrs. Spears)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. IMITATION HONEY PRODUCT LAW.

§19-2D-1. Definitions.
§19-2D-2. Labeling.

§19-2D-1. Definitions.

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

4 "Imitation honey" means any mixture of sugars with or
5 without honey as one of the constituent ingredients, which
6 has been manufactured to represent honey.
“Label” means all written, printed or graphic information upon, attached to or accompanying product containers or wrappers.

“Package” means any container or wrappings in which a product is enclosed for use in the delivery or display of that product to retail purchasers.

“Person” means any individual, firm, corporation, association or any other group of people or business unit whether or not they are incorporated.

§19-2D-2. Labeling.

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

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

CHAPTER 6

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

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

Notwithstanding any other provisions of this code to the contrary, it is unlawful for any person, firm or corporation to import or otherwise bring or move into this state or sell or offer or expose for sale or have in possession with intent to sell or offer or expose for sale in this state the noxious weed known as multiflora rose, rosa multiflora. Any person, firm or corporation violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars, or confined in jail not more than one year, or both fined and imprisoned. In addition, the commissioner may obtain injunctive relief, along with a civil penalty of one thousand dollars, for any violation of this section in the circuit court of any county wherein such violation occurs. The commissioner shall not under any circumstances grant any permit for the sale in this state of or importation or other movement into this state of multiflora rose, rosa multiflora. The provisions of this section are in addition to the powers, duties and authority given to the commissioner elsewhere in this article and do not limit or abrogate in any way the powers and authority given the commissioner elsewhere in this article, except that the criminal penalties of this section apply to violations of this section and the penalty provisions of section eleven of this article do not apply thereto.
AN ACT to amend and reenact sections two and twelve, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining “bee diseases,” “apiary,” and abandoned apiary”; changing period for inspection of bees being shipped into state from thirty to sixty days; and changing time period for notice to commissioner from ten days after the arrival of bees into the state to prior to the movement into the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.


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


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

5 (a) “Department” means the department of agriculture of the state of West Virginia.

7 (b) “Commissioner” means the commissioner of agriculture of the state of West Virginia or his duly authorized agent.

10 (c) “Person” shall include all corporations, partnerships, associations, societies, individuals or group of
individuals or any employee, servant or agent acting for
or employed by any person as above defined.

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

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

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

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

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

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

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

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

(l) "Abandoned apiary" means any apiary in which
twenty-five percent or more of the colonies are dead or
diseased, or death or disarray of the colonies exposes
them to robbing which may jeopardize the welfare of
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47 neighboring colonies and the hives or apiary are not identified as specified in section nine of this article.

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

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

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

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

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

15 1. Exact location of bees or equipment.

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

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

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

22 Packaged bees bearing a certificate of inspection will be exempt from the provisions of subsection (b) of this section.
AN ACT to amend and reenact sections three, four, eight, nine, eleven, fourteen, fifteen, seventeen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of licensed pesticide application business and certified public applicators; administration and enforcement; certification requirements; cooperative agreements; unlawful acts or grounds for denial, suspension or revocation of license; imposition of civil penalties; penalties as lien.

Be it enacted by the Legislature of West Virginia:

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

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


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

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

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


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


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


1 As used in this article:

2 "Agricultural commodity" means any plant, or part thereof,
or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

“Animal” means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shellfish.

“Certified applicator” means any person who is certified under this article to use or supervise the use of any restricted use pesticides.

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

“Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

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

“Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

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

“Direct supervision” means that unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions
and control of a certified applicator who is available if and
when needed, even though such certified applicator is not
physically present at the time and place the pesticide is applied.

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

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

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

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

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

"Certified public applicator" means a licensed applicator
who applies "restricted use pesticides" as an employee of a
state agency, municipal corporation or other governmental
agency. This term does not include employees who work
only under the direct supervision of a certified public applicator.

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

"Permit" means a written certificate, issued by the commissioner authorizing the use of certain restricted use pesticides or state restricted use pesticides.

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

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

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

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

"Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

"Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for
restricted use for purposes of producing any agricultural com-
modity on property owned or rented by him or his employer
or (if applied without compensation other than trading of
personal services between producers of agricultural commodi-
ties) on property of another person.

“Restricted use pesticide” means any pesticide classified
for restricted use by the administrator, United States environ-
mental protection agency.

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

“Unreasonable adverse effects on the environment” means
any unreasonable risk to man or the environment, taking into
account the economic, social and environmental costs and
benefits of the use of any pesticide.

“Weed” means any plant which grows where not wanted.

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

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

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

(b) In issuing such regulations, the commissioner shall
give consideration to pertinent research findings and recom-
mendations of other agencies of the state, the federal government, or other reliable sources.

(c) For the purpose of uniformity and in order to enter into cooperative agreements, the commissioner shall adopt "restricted use pesticide" classifications as determined by the administrator, United States environmental protection agency. The commissioner may also, by regulations, after a public hearing following due notice, determine "state restricted pesticides uses" for the state or for designated areas within the state. If the commissioner determines that the pesticide (when applied in accordance with its directions for use, warnings and cautions, and for uses for which it is registered) may cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticide, the pesticide shall be applied only by or under the direct supervision of a certified applicator, or be subject to such other restrictions as the commissioner may determine.

(d) Regulations adopted under this article shall not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and guidelines or rules issued thereunder.

(e) Regulations adopted under this article as to certified applicators of "restricted use pesticides" as designated under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and regulations adopted as to experimental use permits as authorized by such act shall not be inconsistent with the requirements of the Federal Insecticide, Fungicide and Rodenticide Act, as amended and regulations issued thereunder.

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

(g) In order to comply with section four of the Federal
In the Insecticide, Fungicide and Rodenticide Act, the commissioner is authorized to make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.

(h) There is hereby created a pesticide advisory board consisting of seven persons including the commissioner of agriculture who shall be chairman, and one of whom shall be from structural pest control, one of whom shall be a qualified environmental health specialist, one of whom shall be employed in the agricultural chemical industry, one of whom shall be knowledgeable in the area of wildlife resources, one of whom shall be a producer of agricultural crops on which pesticides are applied, and one of whom shall be a citizen member who shall be knowledgeable in the field of pesticides. The six members not representing government departments shall be appointed by the commissioner for terms of four years and may serve successive terms: Provided, That at the inception two shall be appointed for one year, two for two years, one for three years, and one for four years. The board shall advise the commissioner on problems relating to the use and application of pesticides. The board shall meet at such time and place as called by the chairman or by a majority of the board. Members shall serve without compensation and members not from governmental departments shall be paid expenses at the same rate as paid to employees of the state according to the rules and regulations as promulgated pursuant to the West Virginia code.

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

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

(a) No person shall engage in the business of applying pesticides to the lands of another at any time without a licensed pesticide application business license issued by the commissioner. The commissioner shall require an annual fee of fifty dollars for each licensed pesticide application business license issued.
(b) Application for a licensed pesticide application business license shall be made in writing to the commissioner on forms approved or supplied by the commissioner. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications the applicant is applying for and shall include the following:

1. The full name of the person applying for the license;
2. If different than (1) the full name of the individual qualifying under subsection (c) of this section;
3. If the applicant is a person other than an individual, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group;
4. The principal business address of the applicant in the state and elsewhere;
5. The address of each branch office or sub-office from which the business of applying pesticides is carried on. Each sub-office shall be licensed;
6. Nonresidents applying for a licensed pesticide application business license in any separate classification under this article to operate in this state shall file a written power of attorney designating the state auditor as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicant, except that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the state auditor as such agent. The commissioner shall be furnished with a copy of such designation of the state auditor or of a resident agent, such copy to be duly certified by the state auditor;
7. The name and address of each certified commercial applicator applying pesticides or supervising the application...
of pesticides for the licensed pesticide application business;
and

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

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

(d) If the commissioner finds the applicant qualified to apply pesticides in the classifications the applicant has applied for and if the applicant files the financial security required under section fifteen of this article, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the federal aviation agency, the aeronautics commission of this state, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the commissioner shall issue a licensed pesticide application business license. The license so issued shall expire at the end of the calendar year of issue, unless it has been revoked or suspended prior thereto by the commissioner for cause, except when the financial security required under section fifteen of this article is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The commissioner may limit the license of the applicant to certain classifications of pest control work, or to certain areas, or to certain types of equipment, or to certain specific pesticides, if the applicant is only so qualified. If a license is not issued as applied for, the commissioner shall inform the applicant in writing of the reasons therefor.

(c) All persons applying pesticides as a licensed pesticide application business, whether or not they are applying restricted use pesticides, must be certified as a commercial applicator
§19-16B-9. Application of this article to governmental entities; public applicator’s certification required; liability.

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

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

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


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

1. Secure uniformity of regulations;
2. Cooperate in the enforcement of federal pesticide control laws through the use of state and/or federal enforcement personnel and facilities and to implement cooperative enforcement programs;
3. Develop and administer state plans for training and
12 for certification of licensed applicators consistent with federal
13 standards;
14 (4) Contract for training with educational institutions or
15 with other agencies for the purpose of training certified ap-
16 plicators;
17 (5) Contract for monitoring pesticides for the national
18 plan;
19 (6) Prepare and submit state plans to meet federal certi-
20 fication standards, as provided for in section four of the
21 Federal Insecticide, Fungicide and Rodenticide Act, as
22 amended; and
23 (7) Regulate certified applicators.

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

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

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

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

(3) Applied unknown ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;
(5) Operated in a faulty, careless or negligent manner;

(6) Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder, or of any lawful order of the commissioner;

(7) Refused or neglected to keep and maintain the records required by this article, or to make reports when and as required;

(8) Made false or fraudulent records, invoices or reports;

(9) Engaged in the business of applying a pesticide on the lands of another without having a licensed pesticide application business license;

(10) Engaged in the business of applying a restricted use pesticide on the lands of another without having a licensed certified applicator in direct supervision;

(11) Used fraud or misrepresentation in making an application for, or renewal of, a license, permit or certification;

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article or allowed one's license, permit or certification to be used by another person;

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;

(15) Impersonated any federal, state, county or city inspector or official; or

(16) Failed to comply with any provision of this article or any regulation issued thereunder.


(a) The commissioner shall not issue a licensed pesticide
application business license as required in section eight of this article until the applicant has filed evidence of financial security with the commissioner which may consist of a surety bond or liability insurance policy or certification thereof in an amount no less than twenty-five thousand dollars protecting persons who may suffer legal damages as a result of the operations of the applicant or applicant's employees. Such financial security need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant.

(b) The commissioner, taking into consideration the different classifications or categories of licensed pesticide application business licenses, shall establish the amount and kind of financial security for property damage and public liability, each separately, and including loss of damage arising out of the actual use of any pesticide which each classification of licensed licensee requires. Such financial security shall be maintained at not less than that sum at all times during the licensed period. The commissioner shall be notified forty-five days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety or insurer for all claims shall be limited to the face of the bond or liability insurance policy. The commissioner may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in the amount not exceeding that which the commissioner shall establish separately for aerial applicators and for other commercial applicators for the total amount of financial security required herein. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim such deductible clause shall not be accepted by the commissioner unless such applicant furnishes the commissioner with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

Should the surety furnished become unsatisfactory, said applicant shall upon notice immediately establish new evidence of financial security and should he fail to do so, it shall be
unlawful thereafter for such person to engage in said business
of applying pesticides until the financial security is brought
into compliance with the requirements as established by the
commissioner and the person's license is reinstated.

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

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

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


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

(b) No state court shall allow the recovery of damages
for administrative action taken if the court finds that there was
probable cause for such action.

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

CHAPTER 9

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

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

AN ACT making a supplementary appropriation of public money out
of the treasury for payment of claims against the state and the
designated agencies thereof and from the balances of the state
fund, general revenue, the state road fund and the special
revenue fund of the alcohol beverage control commissioner re-
maining unappropriated for the current fiscal year ending the
thirtieth day of June, one thousand nine hundred eighty-one, and
to remain in effect through the fiscal year ending the thirtieth
day of June, one thousand nine hundred eighty-two, supple-
menting chapter three, acts of the Legislature, regular session,
one thousand nine hundred eighty, known as the budget bill.
WHEREAS, The Governor submitted to the Legislature, at its regular session, one thousand nine hundred eighty-one, the executive budget document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the special revenue fund of the alcohol beverage control commissioner available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-one; and

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

Be it enacted by the Legislature of West Virginia:

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

TITLE 2. APPROPRIATIONS.

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

1 (a) Claims against the Supreme Court—Mental Hygiene Fund:

TO BE PAID FROM GENERAL REVENUE FUND

4 (1) Richard K. Swartling $ 1,725.00
5 (2) Michael D. Sturm 402.50
6 (3) Helen Joyce Davis 94.47
7 (4) Boyd L. Warner 2,055.00
8 (5) Jack H. Walters 240.00
9 (6) Paul A. Viars 400.00
10 (7) James A. Varner 225.00
11 (8) Kennad L. Skeen 633.20
12 (9) James E. Seibert 2,864.00
13 (10) Royce B. Saville 487.50
14 (11) Michael B. Keller 718.75
15 (12) Jerald E. Jones 1,120.00
16 (13) John S. Holy 2,675.00
(14) R. R. Fredeking, II ........................ 11,780.00
(15) John S. Folio ................................ 592.50
(16) John J. Droppleman .......................... 454.25
(17) F. William Brogan, Jr. ......................... 3,957.50
(18) Ward D. Stone, Jr. ............................ 4,025.00
(19) Clyde A. Smith, Jr. ............................ 1,311.00
(20) Carroll T. Lay .................................. 270.00
(21) J. Burton Hunter, III ........................... 1,232.70
(22) John C. Higinbotham ........................... 4,300.00
(23) Grover C. Goode ................................ 1,225.00
(24) Dennis V. Dibenedetto .......................... 600.00
(25) Stephen Jon Ahlgren ............................ 347.50
(26) J. P. McMullen, Jr. ............................. 2,771.33
(27) Charles J. Hyer ................................. 1,900.00
(28) Lisa A. Stewart ................................. 30.00
(29) James A. Stewart ............................... 267.00
(30) Mary Jo Goettler ............................... 61.56
(31) Deborah K. Hunt ................................ 175.00
(32) Irene W. Ross .................................. 500.00
(33) Dorothy Springer ............................... 59.00
(34) Lorena B. Hoover ............................. 60.00
(35) Ginny L. McCoy ................................. 285.00
(36) Christine L. Bitter ............................ 275.00
(37) Elizabeth H. Field ............................ 496.50
(38) Teresa L. Anderson ............................ 50.00
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(40) John L. Campbell ............................. 150.00
(41) Merleene B. Campbell ......................... 415.30
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(47) G. F. Hedges, Jr. ............................ 690.00
(48) J. K. Chase, Jr. ............................... 2,150.00
(49) John M. Thompson, Jr. ....................... 2,485.00
(50) Ralph D. Keightly, Jr. ....................... 1,412.50
(51) Lawrence B. Lowry ............................ 775.00
(52) Thomas M. Hayes ............................ 4,610.00
(53) W. Del Roy Harner ............................ 3,650.00
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184 (b) Claims against the Office of the State Auditor—Needy Persons Fund:

185 TO BE PAID FROM GENERAL REVENUE FUND

| 187 | (1) John S. Hrklo | 500.00 |
| 188 | (2) Thomas L. Butcher | 1,133.83 |
| 189 | (3) Ribel & Julian | 1,590.00 |
| 190 | (4) J. M. Tully | 645.00 |
| 191 | (5) James C. Recht | 946.50 |
| 192 | (6) T. Owen Wilkins | 800.50 |
| 193 | (7) Frank Ribel, Jr. | 115.00 |
| 194 | (8) John C. Higinbotham | 176.25 |
| 195 | (9) John R. Glenn | 45.00 |
| 196 | (10) William H. Ansel, Jr. | 1,028.40 |
| 197 | (11) Cynthia L. Turco | 1,107.52 |
| 198 | (12) Paul R. Goode, Jr. | 395.00 |
| 199 | (13) Loudoun L. Thompson | 3,551.75 |
| 200 | (14) Michael D. Sturm | 850.00 |
| 201 | (15) Eugene D. Pecora | 414.75 |
| 202 | (16) Charles E. Parsons | 852.50 |
| 203 | (17) Raymond G. Musgrave | 2,997.37 |
| 204 | (18) John S. Holy | 1,500.00 |
| 205 | (19) Sprague Hazard | 388.75 |
| 206 | (20) Lucien Lewin | 50.00 |
| 207 | (21) Michael Scales | 161.75 |
| 208 | (22) J. Wendell Reed | 341.30 |
| 209 | (23) Stephen L. Thompson | 227.00 |
| 210 | (24) David S. Alter, II | 272.85 |
| 211 | (25) Charles F. Printz, Jr. | 1,276.34 |
| 212 | (26) V. Alan Riley | 1,482.00 |
| 213 | (27) Russell M. Clawges, Jr. | 1,432.02 |
| 214 | (28) Royce B. Saville | 643.75 |
| 215 | (29) John S. Kaull | 1,148.80 |
216  (30) William O’Brien ........................................ 410.00
217  (31) Stephen Jon Ahlgren .................................. 20.00
218  (32) Robert Poyourow ..................................... 2,042.88
219  (33) George A. Markusic .................................. 1,169.96
220  (34) Core and Core ....................................... 825.35
221  (35) James D. Terry ....................................... 852.50
222  (36) C. Elton Byron, Jr. .................................. 815.00
223  (37) Carroll T. Lay ....................................... 1,404.20
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225  (39) Nancy S. Miller ...................................... 135.00
226  (40) P. C. Duff ........................................... 1,026.25
227  (41) Ray L. Hampton, II .................................. 295.00
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230  (44) Robert E. Vital ...................................... 175.00
231  (45) Ronald E. Anderson .................................. 1,147.50
232  (46) Robert C. Chambers .................................. 1,062.50
233  (47) Paul A. Ryker ....................................... 100.00
234  (48) Marsha Dalton ........................................ 340.00
235  (49) George W. Hill, Jr. ................................ 2,146.50
236  (50) Richard Starkey ..................................... 168.00
237  (51) John P. Anderson ................................... 964.75
238  (52) Thomas S. Lilly ..................................... 250.00
239  (53) Simmons & Martin ................................... 65.00
240  (54) Bert Michael Whorton ................................ 968.25
241  (55) Sanders & Blue ..................................... 1,142.97
242  (56) Paul Nagy ........................................... 85.88
243  (57) Paul H. Woodford, II ................................. 302.50
244  (58) Philip A. Reale ...................................... 444.40
245  (59) R. Terry Butcher .................................... 102.50
246  (60) David G. Palmer ..................................... 3,767.02
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249  (63) William B. Kilduff .................................. 683.85
250  (64) Lane O. Austin ...................................... 213.15
251  (65) Derek Craig Swope .................................. 161.50
252  (66) Philip T. Lilly, Jr. .................................. 170.00
253  (67) James L. Satterfield ................................ 157.09
254  (68) J. Burton Hunter, III ................................. 506.31
255  (69) Ernest M. Douglass .................................. 182.50
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APPROPRIATIONS

(190) Garrett, Whittier & Garrett ........ 495.00
(191) James Wilson Douglas ........ 712.50
(192) Michael T. Clifford ........ 1,990.00
(193) William W. Pepper ........ 473.70
(194) C. Blaine Myers ........ 993.00
(195) Donald G. Underwood ........ 640.00

(c) Claim against the Board of Chiropractic Examiners:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Kanawha Office Equipment, Inc. .... 608.00

(d) Claims against the Board of Regents:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Sue H. Ellis ........ 948.00
(2) Jamison Electrical Construction Co. .... 21,662.27
(3) Kanawha Office Equipment, Inc. .... 2,028.00
(4) Ernest J. Sandy ........ 1,459.00
(5) Spatial Data Systems, Inc. .... 650.00

(e) Claims against the Department of Corrections:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Appalachian Regional Hospital .... 1,243.25
(2) Law Enforcement Ordnance Co. .... 5,065.30
(3) Southern West Virginia Clinic .... 185.00
(4) Tony J. Veltri, d/b/a/ Farmers Delight Co. .... 5,172.78
(5) Weirton General Hospital .... 4,323.05
(6) Appalachian Regional Hospital .... 10,355.15
(7) Morris E. Brown, D.D.S. .... 24.00
(8) Climate Makers of Charleston, Inc. .... 2,568.00
(9) Decar Chemical Co. .... 110.00
(10) Davis Memorial Hospital .... 1,096.62
(11) Exxon Company, U.S.A. .... 246.53
(12) Gulf Oil Co., U.S. .... 54.63
(13) George L. Hill, Jr. .... 600.00
(14) Huntington Steel & Supply Co. .... 1,028.99
(15) IBM Corporation .... 836.64
(16) Industrial Rubber Products Co. .... 301.47
(17) Kellogg Company .... 4,174.35
412  (18) The Kroger Co. ............................... 13.80
413  (19) Memorial General Hospital ................ 46,156.75
414  (20) Ohio Valley Medical Center, Inc. .......... 11,656.57
415  (21) Raleigh General Hospital .................. 2,432.60
416  (22) Randolph County Board of Education .... 392.00
417  (23) Southern West Virginia Clinic ............... 310.00
418  (24) Taylor County Commission .................. 280.00
419  (25) Town & Country Dairy ...................... 2,096.08
420  (26) Union Oil Company of California .......... 3,248.22
421  (27) Wheeling Hospital ........................... 585.95
422  (28) Xerox Corporation .......................... 1,050.66

423 (f) *Claim against the Department of Culture and History:*

TO BE PAID FROM GENERAL REVENUE FUND

424  (1) IBM Corporation .............................. 658.00

426 (g) *Claims against the Department of Finance and Administration:*

TO BE PAID FROM GENERAL REVENUE FUND

429  (1) Capital Business Interiors, Div. of
     Capitol Business Equipment, Inc. ........... 141.00
430  (2) Uarco, Inc. .................................. 2,744.95

432 (h) *Claims against the Department of Health:*

TO BE PAID FROM GENERAL REVENUE FUND

434  (1) American Hospital Supply .................... 424.32
435  (2) Appalachian Engineers, Inc. ................. 1,325.00
436  (3) Dill's Mountaineer Associates, Inc. ....... 2,406.00
437  (4) Barbara Gruber ............................... 3,556.66
438  (5) Huntington Water Corporation ............... 543.52
439  (6) Lourdes Lezada ............................... 6,000.00
440  (7) Shaeffer and Associates ..................... 576.00
441  (8) Three Printers, Inc. .......................... 2,347.27
442  (9) Louis B. Varney, d/b/a Tri-State
     Inspection Service ........................... 4,250.00
443  (10) Harold L. Weber, Jr. ......................... 9,791.91
445  (11) William Paul Hall, Sr., Admin. of
        the Estate of William Paul Hall, Jr. ....... 11,783.19
(i) **Claim against the Department of Public Safety:**

**TO BE PAID FROM GENERAL REVENUE FUND**

(1) Mary Louise Szelong .......................... 1,100.00

(j) **Claims against the Division of Vocational Rehabilitation:**

**TO BE PAID FROM GENERAL REVENUE FUND**

(1) Clinic Private Division, University of Virginia .......................... 842.00

(2) Heck’s, Inc. .................................... 245.56

(k) **Claim against the Nonintoxicating Beer Commission:**

**TO BE PAID FROM GENERAL REVENUE FUND**

(1) Falls City Industries, Inc., formerly Falls City Brewing Co. .......................... 156.75

(l) **Claim against the Office of the Governor:**

**TO BE PAID FROM GENERAL REVENUE FUND**

(1) Empire Foods, Inc. .......................... 3,165.50

(m) **Claim against the State Tax Department:**

**TO BE PAID FROM GENERAL REVENUE FUND**

(1) Consolidated Contractors .......................... 1,600.00

(n) **Claims against the Department of Highways:**

**TO BE PAID FROM STATE ROAD FUND**

(1) A. J. Baltes, Inc. .......................... 588,271.73

(2) Maria Caterina Anania .......................... 9,000.00

(3) Robert S. Atkinson and Evelyn Atkinson .......................... 4,948.90

(4) Russell Lee Barkley .......................... 1,080.00

(5) Harry H. Barrett .......................... 68.30

(6) Black Rock Contracting, Inc. .......................... 8,067.79

(7) Eli Blankenship, Jr., Admin. of the Estate of Johnny Blankenship, deceased .......................... 14,213.86

(8) The Board of Education of the County of Kanawha .......................... 1,694.81
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<th>Page</th>
<th>Name</th>
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<tr>
<td>480</td>
<td>Virginia Burton</td>
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<td>Homer Bush</td>
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<td>George Carper</td>
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<td>John F. Clark</td>
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<td>Coleman Oil Company, Inc.</td>
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<td>Bertie K. Cox</td>
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<td>486</td>
<td>Melvin Dingess and Corenia Dingess</td>
<td>2,500.00</td>
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<td>487</td>
<td>Duling Brokerage, Inc.</td>
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<td>Joe B. Eller</td>
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<td>Edward Engel</td>
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<td>490</td>
<td>Daniel C. Farley, Jr.</td>
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<td>491</td>
<td>Robert L. Ferguson, Executor of the</td>
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<tr>
<td></td>
<td>Estate of Elizabeth L. Ferguson,</td>
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<tr>
<td></td>
<td>deceased</td>
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<td>494</td>
<td>Martin V. Gaston, Sr.</td>
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<td>Elizabeth Smith Grafton</td>
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<td>496</td>
<td>Drema D. Greenlee and Stephen E. Greenlee</td>
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<td>Walter A. Henriksen</td>
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<td>Jean C. Littlepage</td>
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<td>503</td>
<td>Carroll Lynch</td>
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<td>504</td>
<td>Jonathan E. McDonald</td>
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<td>505</td>
<td>Jonathan E. McDonald, Admin. of the</td>
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<td></td>
<td>Estate of James Edgar McDonald,</td>
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<td>508</td>
<td>Jonathan E. McDonald, Admin. of the</td>
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<td>Estate of Penny Jo McDonald,</td>
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<td>deceased</td>
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<td>S. A. Meadows</td>
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<td>Cleo Lively Moore</td>
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<td>Franklin L. Dalton</td>
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<td>514</td>
<td>Catherine Nestor</td>
<td>11,196.50</td>
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<td>515</td>
<td>Jack H. Parsons, Jr.</td>
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<td>516</td>
<td>Garnet L. Pelfrey</td>
<td>307.93</td>
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<td>517</td>
<td>Gerald L. Pelfrey and Deloris Perry</td>
<td>146.86</td>
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<td>518</td>
<td>Joyce Porter</td>
<td>306.05</td>
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<td>Claimant</td>
<td>Amount</td>
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<td>----------------------------------------------</td>
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<td>Roy C. Rayburn, Jr.</td>
<td>171.67</td>
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<td>Dencil Reynolds and Judith Reynolds</td>
<td>44.12</td>
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<tr>
<td>Roscoe Rhodes and Maxine V. Rhodes</td>
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<td></td>
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<tr>
<td>Ronnie Gene Roach</td>
<td>90.25</td>
<td></td>
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<tr>
<td>Danny Lee Rockett and Kathy</td>
<td>199.34</td>
<td></td>
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<td>Franklin D. Rowe</td>
<td>188.74</td>
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<td>Guy N. Sayre</td>
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<tr>
<td>Jessie Sayre and Densil O. Sayre</td>
<td>41.01</td>
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<td>A. O. Secret</td>
<td>96.76</td>
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<td>Shel Products, Inc.</td>
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<td>Kevin E. Smith</td>
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<tr>
<td>Larry Keith Smith</td>
<td>296.30</td>
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<td>Joe Snodgrass</td>
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<td>Charles H. Spradling, Jr.</td>
<td>117.62</td>
<td></td>
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<tr>
<td>Gary Cline Spurgeon</td>
<td>185.00</td>
<td></td>
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<td>Harold Ray Stafford</td>
<td>917.50</td>
<td></td>
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<td>Posey L. Stevenson</td>
<td>72.10</td>
<td></td>
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<tr>
<td>Stone Company, Inc.</td>
<td>4,500.00</td>
<td></td>
</tr>
<tr>
<td>Frank Terango and Duell Terango</td>
<td>720.11</td>
<td></td>
</tr>
<tr>
<td>Nancy J. Thabet</td>
<td>666.52</td>
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<td>Debra A. Vinson</td>
<td>44.29</td>
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<td>Alva Katherine White</td>
<td>1,000.00</td>
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<td>Paul White and Wanda White</td>
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<td>Rose M. Allen</td>
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<td>Ronald L. Bailey</td>
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<td>Carmet Company</td>
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<td>Frances Jeanette Casey</td>
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<td>Cochran Electric Company</td>
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<td>Chester Jones</td>
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<td>Barton Meaige</td>
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<td>Charles E. Williams</td>
<td>12,000.00</td>
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(o) Claims against the Department of Motor Vehicles:

(to be paid from state road fund)

<table>
<thead>
<tr>
<th>Claimant</th>
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<tbody>
<tr>
<td>Bank of Gassaway</td>
<td>3,061.16</td>
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<tr>
<td>Randy Lee Shamblin</td>
<td>240.00</td>
</tr>
<tr>
<td>3M Company</td>
<td>3,000.00</td>
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</table>
The purpose of this supplementary appropriation bill is to supplement the budget bill, enacted at the regular session of the Legislature, 1980, by adding thereto a new section funding payment of claims against the state and its designated agencies, such appropriation being available for expenditure upon the effective date of the bill and in the current fiscal year of 1980-81 and to remain in effect through the fiscal year ending June 30, 1982.

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

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

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

That Account No. 1500, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

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

CHAPTER 11
(H. B. 1161—By Mr. Speaker, Mr. See)

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

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

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 2980, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.
2
3 Section 1. Appropriations from general revenue.
4
5    39—Teachers Retirement Board
6
7    Acct. No. 2980
8
9    Supplemental Benefits for Annuitants .......... $524,300
10
11 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year of 1980-81. Such amount shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 12
(H. B. 1160—By Mr. Speaker, Mr. See)

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

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

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 1981, which included a statement of the state fund, general revenue; and
WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1980-81, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3680, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item.

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

CHAPTER 13

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

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

<table>
<thead>
<tr>
<th>Title</th>
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</tr>
</thead>
<tbody>
<tr>
<td>4 Assistance Payments</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>9 Medical Services</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue
remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Greenbrier School for Mentally Retarded Children, Account No. 4140, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 4140, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 64—Greenbrier School for Mentally Retarded Children

4 Acct. No. 4140

5 1  Personal Services ........................................ $44,000

6 The purpose of this supplementary appropriation bill is to

7 supplement the aforesaid account and item therein for

8 expenditure in the current fiscal year of 1980-81. Such

9 amount shall be available for expenditure immediately upon

10 the effective date of this bill.

CHAPTER 15

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue
remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Department of Mines, Account No. 4600, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 4600, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1. TITLE 2. APPROPRIATIONS.

2. Section 1. Appropriations from general revenue.

3. 76—Department of Mines

4. Acct. No. 4600

5. 2 Current Expenses ..............................................$70,000

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

CHAPTER 16
(H. B. 1144—By Mr. Speaker, Mr. See)

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June
thirtieth, one thousand nine hundred eighty-one, to the De­
partment of Banking, Account No. 4800, supplementing chapter 
three, acts of the Legislature, regular session, one thousand 
nine hundred eighty, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 4800, chapter three, acts of the Legislature, 
regular session, one thousand nine hundred eighty, known as the 
budget bill, be supplemented by adding the following sum to the 
designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 86—Department of Banking

4 Acct. No. 4800

5 2 Current Expenses $34,251

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

CHAPTER 17

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

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

AN ACT making a supplementary appropriation of public money 
out of the treasury from the balance of all general revenue 
remaining unappropriated for the fiscal year ending June
thirtieth, one thousand nine hundred eighty-one, to the Department of Natural Resources, Account No. 5650, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 5650, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 97—Department of Natural Resources

4 Acct. No. 5650

5 5 Fire Prevention Control $136,000

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

CHAPTER 18

(H. B. 1148—By Mr. Speaker, Mr. See)

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remain-
ing unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the West Virginia public employees insurance board, Account No. 6150, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

_Be it enacted by the Legislature of West Virginia:_

That Account No. 6150, chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1

**TITLE 2. APPROPRIATIONS.**

2 _Section 1. Appropriations from general revenue._

3 118—*West Virginia Public Employees Insurance Board*

4 Acct. No. 6150

5 2 Public Employees Health Insurance—

6 3 State Contribution ............................ $2,500,000

7 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1980-81. Such amount shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 19

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

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

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

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

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

Be it enacted by the Legislature of West Virginia:

That Account No. 6410, chapter three, acts of the Legislature, regular session, known as the budget bill, be supplemented by adding the following sum:

1 TITLE 2. Appropriations.

2 Section 1. Appropriations from general revenue.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 121—State Department of Highways

5 Acct. No. 6410

6 Unclassified—Total $26,500,000

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

9 The purpose of this supplementary appropriation bill is to supplement the aforesaid account for expenditure in the current fiscal year of 1980-81. Such amounts shall be available for expenditure immediately upon the effective date of the bill.
CHAPTER 20
(S. B. 264—Originating in the Senate Committee on Finance)

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the State Department of Highways, Account No. 6700, supplementing chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

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

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented as follows:
TITLE 2. APPROPRIATIONS.

Section 2. Appropriations from other funds.

122—State Department of Highways

Acct. No. 6700

TO BE PAID FROM THE STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway, Trunkline and Feeder</td>
<td>$48,892,000</td>
</tr>
<tr>
<td>Maintenance State Local Services</td>
<td>$63,588,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>$16,100,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>$84,400,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>$222,309,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$83,500,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>$140,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>$37,700,000</td>
</tr>
</tbody>
</table>

Total ......................................................................... $701,489,000

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

CHAPTER 21

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of the special revenue account of the Department of Natural Resources remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, to the Department of Natural Resources, Account No. 8300, supplementing chapter three,
acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

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

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

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations from other funds.

3 137—Department of Natural Resources

4 Acct. No. 8300

5 TO BE PAID FROM SPECIAL REVENUE FUND

6 2 Current Expenses ........... $ 90,000

7 3 Repairs and Alterations . 22,000

8 4 Equipment .................. 248,000

9 5 Land Purchase and Buildings . 40,000

10 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1980-81. Such amounts 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 Department of Corrections, Account No. 3660, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

CORRECTIONS

46—Department of Corrections
Community Service
Northern Region

Acct. No. 3660

1 Personal Services ........................................ $ 406,924
2 Current Expenses ......................................... 100,245

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 eighty-one, shall be made 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 Department of Corrections, Account No. 3670, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1. TITLE 2. APPROPRIATIONS.

2. Section 1. Appropriations from general revenue.

3. CORRECTIONS

4. 47—Department of Corrections

5. Community Service

6. Southern Region

7. Acct. No. 3670

8. 1 Personal Services ........................................ $ 538,527

9. 2 Current Expenses ........................................ 141,031

10. The purpose of this supplementary appropriation bill is 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 eighty-one, shall be made 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 Department of Corrections, Account No. 3680, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

CORRECTIONS

48—Department of Corrections

Acct. No. 3680

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$412,996</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>159,515</td>
</tr>
</tbody>
</table>

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 eighty-one, shall be made 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 Department of Corrections, Account No. 3700, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

50—West Virginia Industrial School for Boys

Acct. No. 3700

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

8 The purpose of this supplementary appropriation bill is to 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 eighty-one, shall be made 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 Department of Corrections, Account No. 3720, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTIONS

4 52—West Virginia Industrial Home for Girls

5 Acct. No. 3720

6 1 Personal Services ........................ $ 416,203
7 4 Equipment .................. 14,500

8 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 eighty-one, shall be made 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 Department of Corrections, Account No. 3740, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

CORRECTIONS

54—West Virginia State Prison for Women

Acct. No. 3740

1  Personal Services ......................... ....... $375,534
2 3  Repairs and Alterations .................. ........ 11,000

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 money being appropriated hereby. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred eighty-one, shall be made available for expenditure upon the effective date of this bill.
CHAPTER 28
(S. B. 410—Originating in the Senate Committee on Finance)

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

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

Be it enacted by the Legislature of West Virginia:

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

 TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

65—State Health Department—Mental Hospitals

Acct. No. 4160

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

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

CHAPTER 29
(S. B. 411—Originating in the Senate Committee on Finance)

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Colin Anderson
Center, Account No. 4190, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3

66—Colin Anderson Center
4 Acct. No. 4190
5 1 Personal Services .......................$6,382,158
6 2 Current Expenses ....................... 1,008,100

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

CHAPTER 30

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

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

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

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

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

67—Fairmont Emergency Hospital

Acct. No. 4250

2 Current Expenses .................................. $316,646
3 Repairs and Alterations .............................. 20,100

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

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Chapter 31

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

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

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

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4300, as appropriated by chapter three, acts of the Legislature, regular
session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:

1  TITLE 2. APPROPRIATIONS.

2  Section 1. Appropriations from general revenue.

3  70—Hopemont Hospital

4  Acct. No. 4300

5  1  Personal Services ........................................... $3,474,827

6  3  Repairs and Alterations ................................. 91,700

7  The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

CHAPTER 32
(S. B. 546—Originating in the Senate Committee on Finance)

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Mines, Account No. 4600, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

76—Department of Mines

Acct. No. 4600

1 Personal Services ........................................ $2,829,559
2 Current Expenses ........................................... 1,041,904
5 Board of Coal Mine Health and Safety .............. 65,000

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 eighty-one, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 33

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

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Nonintoxicating Beer Commissioner, Account No. 4900, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4900, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

88-West Virginia Nonintoxicating Beer Commissioner

Acct. No. 4900

2 Current Expenses .................................................. $79,404
3 Equipment .............................................................. 300

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

CHAPTER 34
(S. B. 262—Originating in the Senate Committee on Finance)

[Passed February 27, 1981; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 2. Appropriations from other funds.

122—State Department of Highways

Acct. No. 6700

TO BE PAID FROM THE STATE ROAD FUND

<table>
<thead>
<tr>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Maintenance Expressway, Trunkline and Feeder</td>
<td>$48,151,000</td>
</tr>
<tr>
<td>Maintenance State Local Services</td>
<td>$52,843,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>$1,000,000</td>
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<tr>
<td>Debt Service</td>
<td>$84,400,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>$216,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$83,500,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>$140,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>$28,995,000</td>
</tr>
</tbody>
</table>
| **Total**                                        | **$674,989,000**

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 1980-81 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.

CHAPTER 35

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

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

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-one, as appropriated by chapter three, acts
of the Legislature, regular session, one thousand nine hundred eighty, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

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

1 TITLE 2. APPROPRIATIONS.
2 Sec. 2. Appropriations from other funds.
3 123—Department of Motor Vehicles
4 Acct. No. 6710
5 TO BE PAID FROM STATE ROAD FUND
6 2 Current Expenses $2,546,091
7 4 Purchase of License Plates 444,100
8 7 Public Employees Health Insurance 124,498

The purpose of this supplementary appropriation Bill is to supplement, amend and transfer certain money 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 eighty-one, shall be available for expenditure upon the effective date of this bill.

CHAPTER 36
(Com. Sub. for H. B. 849—By Mr. Tucker)

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

AN ACT to amend article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the property that may be exempted under the
"Bankruptcy Reform Act of 1978" (Public Law 95-598) in a bankruptcy proceeding.

Be it enacted by the Legislature of West Virginia:

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

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

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


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

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

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

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

(d) The debtor's interest, not to exceed five hundred dol-
lars in value, in jewelry held primarily for the personal, family
or household use of the debtor or a dependent of the debtor.

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

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

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

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

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

(j) The debtor's right to receive:

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

(2) A veterans' benefit;

(3) A disability, illness or unemployment benefit;

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

(5) A payment under a stock bonus, pension, profitsharing,
annuity, or similar plan or contract on account of illness, dis-
ability, death, age or length of service, to the extent reason-
ably necessary for the support of the debtor and any dependent
of the debtor, unless:
Such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(B) Such payment is on account of age or length of service; and

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

(k) The debtor's right to receive, or property that is traceable to:

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

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

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

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

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

This section shall not be construed to affect the applicability of any provision of the “Bankruptcy Reform Act of 1978” (Public Law 95-598) other than section 552(d).
thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred two, one hundred nine and one hundred ten, article four, chapter forty-six-a of said code, all relating to banks and banking; certificates of authority and licenses of financial institutions; presumption of convenience and advantage granted supervised lender in certain instances when applying for certificate of authority to operate as an industrial loan company; West Virginia consumer credit protection act; dual business authority to operate as a supervised lender given banking institutions and licensees under the West Virginia industrial bank and industrial loan company act and the West Virginia secondary mortgage act; presumption of convenience and advantage granted industrial loan company in certain instances when applying for certificate of authority to operate as a supervised lender.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

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

1 (a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or
other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

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

(c) If the application be that of a banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and statements submitted, and, if he finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he shall issue to it a certificate or license permitting it to engage in business: Provided, That any supervised lender which is operating in good standing in accordance with the provisions of article four, chapter forty-six-a shall be presumed to have established that the public convenience and advantage will be promoted in regard to
its application for a certificate of authority to operate as an industrial loan company as defined in article seven, chapter thirty-one of this code in the same location for which it is licensed as a supervised lender. Such certificate or license shall be preserved and displayed in the place of business of such banking or other financial institution.

(d) In addition to the requirements of subsection (b) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state shall file with the commissioner of banking a copy of the laws of the jurisdiction under which it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation. The fee for the original and each additional license or certificate issued to a foreign corporation shall be one hundred dollars, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and displayed in the place of business of such corporation.

(e) No amendment of the charter or bylaws of any domestic or foreign corporation engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by
the commissioner of banking; but, if the commissioner does not disapprove such proposed change within twenty days after it is received by him, it shall be deemed to have been approved. A certified copy of the amendment of any statute of another state governing such a foreign corporation shall be filed with the commissioner of banking by such foreign corporation within thirty days after such amendment becomes effective in such other state.

(f) Nothing contained in this code shall authorize any person to engage in the banking business in this state except corporations chartered to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so issued under this section or associations authorized to conduct a banking business in West Virginia under the laws of the United States and having their principal place of business in this state.

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

ARTICLE 4. SUPERVISED LENDERS.

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

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

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

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

1 (1) The commissioner shall receive and act on all applications for licenses to make supervised loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, and contain the information the commissioner requires by rule to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the findings required of him before he may issue a license. At the time of the filing of the application, the sum of two hundred fifty dollars shall be paid to the commissioner as an investigation fee.
(2) No license shall be issued to a supervised financial organization other than to one licensed under the provisions of the "West Virginia Industrial Bank and Industrial Loan Company Act" as contained in article seven, chapter thirty-one of this code, or to one licensed under the provisions of the West Virginia secondary mortgage loan act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code: Provided, That the limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making supervised loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at the specified location assets of at least two thousand dollars, and that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted: Provided, That any industrial loan company which is operating in good standing in accordance with the provisions of article four, chapter forty-six-a of this code shall be presumed to have established that the public convenience and advantage will be promoted in regard to its application for a license to make supervised loans in the same location for which it is licensed as an industrial loan company.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the commissioner has notified the applicant in writing that his application has been denied, or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be
made more than fifteen days after the commissioner has mailed
a writing to the applicant notifying him that the application
has been denied and stating in substance the commissioner's
findings supporting denial of the application.

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

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

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

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

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

(1) A supervised lender may not contract for an interest
in land as security. A security interest taken in violation of
this subsection is void: Provided, That this subsection shall
not be construed as prohibiting one licensed to make loans under the provisions of the "West Virginia Industrial Bank and Industrial Loan Company Act" as set forth in the provisions of article seven, chapter thirty-one of this code, or the West Virginia secondary mortgage loan act as set forth in the provisions of article seventeen, chapter thirty-one, from taking an interest in land as security for loans made pursuant to either of those acts.

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

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

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

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

No licensee shall conduct the business of making loans under the provisions of this article within any office, room
or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this article or of the rules and regulations lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter, or from making loans authorized under the provisions of the West Virginia secondary mortgage loan act as set forth in article seventeen, chapter thirty-one of this code, or from making loans authorized under the provisions of the "West Virginia Industrial Bank and Industrial Loan Company Act" as set forth in article seven, chapter thirty-one of this code.

CHAPTER 38
(Com. Sub. for S. B. 414—By Mr. Nelson)

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

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

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

§31A-3-3. Hearings and orders

§31A-3-2. General powers and duties.

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

2 (1) Regulate its own procedure and practice;

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

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

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

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

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

8 (B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any
contrary provision of this code: Provided, That no such permission or authority shall be granted to any banking institution to install or maintain any branch bank or engage in business at any place other than its principal office in this state in contravention of the provisions of section twelve, article eight of this chapter;

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

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

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

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

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

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

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

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

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

(7) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section five, article seven of this chapter: Provided, That nothing contained in this subdivision shall be construed as permitting any banking institution to install or maintain any branch bank or to take any other action or engage in any other
practice prohibited by section twelve, article eight of this chapter, except as permitted by subdivision (8) of this subsection (b); and

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

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

§31A-3-3. Hearings and orders.

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

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

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

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

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

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

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

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

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

(h) Definitions:

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

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

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

CHAPTER 39
(H. B. 1658—By Mr. Shepherd)
[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to generally revising the state laws on receivership, conservatorship, liquidation, merger, consolidation, purchase, reorganization and closing of certain financial institutions in the state and giving the state commissioner of banking, the federal deposit insurance corporation as receiver and insurer, receivers and conservators broad general powers, duties and responsibilities with respect thereto; giving a certain purpose, rules of construction and definitions; providing for the appointment of conservators for said financial institutions and certain deposits and withdrawals during conservatorships and terminations of and reorganizations by conservatorships; requiring certain inventories; providing for the appointment of receivers for said financial institutions and their bonds and certificates; permitting certain suits against stockholders, closings and temporary emergency takeovers of financial institutions by said commissioner and certain court orders for said commissioner; requiring said commissioner to appoint said federal deposit insurance corporation as receiver in particular cases and making special provisions for said corporation's receivership; allowing said corporation certain subrogation rights, the emergency sale of assets, the right to go to circuit court and
other broad authority; providing for certain hearings and notices; discharging said commissioner from liability in certain cases; relating to when receivers may borrow from federal lending agencies and others; providing for the reorganization, purchase, merger and consolidation of and by said financial institutions and the conversions of national banks to state banks; giving the West Virginia board of banking and financial institutions certain authority with respect thereto; providing for the continuing effect of certain obligations and liens; allowing the voluntary liquidation of financial institutions; providing for the involuntary liquidation of said institutions in certain cases; relating to revocations of certificates, permits and licenses of certain financial institutions; providing for the assignment, assumption and termination of certain executory contracts and unexpired leases; specifying when said contracts or leases may not be terminated or modified; providing for the payment of the expenses and debts of said institutions, claims thereupon and the order of priority thereof; requiring the submission of certain claims to receivers, notices by mailing and publication and notice and proof of claim forms; relating to the loss, rejection and payment of said claims; providing a hearing procedure for contested claims and other disputed matters to be heard and decided by hearing examiners with judicial review thereof; relating to the exclusivity of said powers and procedures; and giving the circuit courts of the state certain general and limited jurisdiction with respect to certain matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-1. Purpose; construction.

§31A-7-2. Definitions.

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

§31A-7-4. Receivership.
§31A-7-5. Provisions applicable to federal deposit insurance corporation only.

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

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

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

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

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

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

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

§31A-7-13. Claims procedure.

§31A-7-14. Hearings; judicial review.

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

§31A-7-1. Purpose; construction.

1 (a) The purpose of this article is to:

2  (1) To the maximum extent possible, protect and preserve the assets of depositors, shareholders and other creditors in the financial institutions of this state;

3    (2) Maintain the financial integrity, stability and accountability of the financial institutions of this state;

4    (3) Strengthen and make more effective the authority of the state commissioner of banking to protect and preserve such assets and maintain such integrity, stability and accountability;

5    (4) Permit the federal deposit insurance corporation in all appropriate cases to act as receiver for a failing financial institution; and

6    (5) Make more practical and more flexible the conser-
vatorship and receivership provisions of this article dealing
with financial institutions that are substantially impaired, have
failed or appear to be about to fail.

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

§31A-7-2. Definitions.

As used in this article:

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

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

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

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

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

(f) "Balance sheet insolvency" exists when the assets of
a financial institution are less than its liabilities, exclusive of
capital. For the purposes of ascertaining balance sheet insol-
vency, assets shall be valued at their book value, unless the
commissioner of banking determines that the assets are insuf-
icient to meet liabilities within a reasonable time making prob-
able the liquidation of assets; and if any such determination
is made, the assets shall be valued at fair market value.
§31A-7-3. Conservatorship; reorganization.

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

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

(c) A conservator has all the rights, powers, duties, responsibilities and privileges that receivers have under this article and is subject to all obligations to which such receivers are subject.

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

(e) All reasonable and necessary expenses actually incurred in the course of any such conservatorship shall be paid out of the assets of the financial institution and are a lien on such assets, which lien has priority over any other lien. The
conservator shall be paid a reasonable compensation, to be
fixed by the commissioner, for his services but such compensa-
tion must not exceed the amount that would be paid to
employees of the state department of banking for similar
services.

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

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

Deposits received while a financial institution is in the
hands of a conservator shall: (1) Be kept on hand in cash
or (2) be deposited with a federal reserve bank or deposited
with such financial institution as the commissioner in his
discretion designates or (3) be invested in direct obligations
of the United States or the state of West Virginia or in funded
obligations of any political subdivision of this state approved
by the commissioner.
(i) In any reorganization of any financial institution under a plan of a kind that by its own terms or under existing law requires the consent, as the case may be, of depositors and other creditors, or of stockholders, or of both depositors and other creditors and stockholders, such reorganization shall become effective only when the commissioner is satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders and that it is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he imposes, and when, after reasonable notice of such reorganization, as the case may be, depositors and other creditors of such financial institution representing at least seventy-five percent in amount of its total deposits and other liabilities; or stockholders owning at least two thirds in amount of its outstanding capital stock; or both depositors and other creditors representing at least seventy-five percent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of the financial institution in determining the seventy-five percent thereof as above provided.

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

(k) Fifteen days after the affairs of the financial institution have been returned to its board of directors by the conservator, either with or without a reorganization as provided in subsection (i) of this section, the provisions of subsections (g) and (h) of this section shall no longer be effective. Before the conservator returns the affairs of the institution to its board of directors, he shall publish a notice, in such form as the commissioner approves, stating the date on which the affairs of the financial institution will be returned to its board of directors and that the provisions of subsections (g) and (h) of this section will not be effective fifteen days after such date. 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 county in which the financial institution is located. On the date of the publication of such notice, the conservator shall send a copy of such notice by registered mail to the last known address of every person who is a depositor as shown by the records of the institution. The conservator shall send a similar notice in like manner to every person making a deposit in such institution under said subsection (g) after the date of such newspaper publication and before the time when the affairs of the institution are returned to its directors.

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

(m) The commissioner may prescribe such rules and regulations, not inconsistent with the provisions of this article, as he considers necessary or convenient to carry out the provisions of this section.

§ 31A-7-4. Receivership.

(a) If the commissioner ascertains from any source that the capital of any financial institution is substantially im-
paired and such institution, after receiving notice from the commissioner, does not promptly make good such impairment to the satisfaction of the commissioner, or if the commissioner ascertains from any source that any financial institution is insolvent or reasonably appears about to be insolvent, the commissioner shall appoint a receiver to take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Such title shall pass to and vest in the receiver by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall give the receiver a certificate of appointment. Immediately upon taking such possession and control, the receiver shall establish and maintain such books, records and procedures for accountability as the commissioner prescribes and may exercise all the powers, duties and authority provided for in this article.

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

(b) In any case where a receiver is to be appointed pursuant to subsection (a) of this section, if the involved financial institution has deposits insured by the federal deposit insurance corporation and if such corporation is required or otherwise willing to be receiver for the institution, the commissioner shall appoint the federal deposit insurance corporation as receiver for that financial institution.

(c) A receiver appointed under any provision of this article has the following general powers, duties and responsibilities:
(1) To take full and exclusive possession and control of and title to the papers, books, records, moneys, assets, business and all other things of every description and location of the financial institution and to collect all debts, dues and claims belonging to the financial institution;

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

(3) To exercise all fiduciary functions of the financial institution as of the date of the commencement of the receivership;

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

(5) Subject to the approval of the circuit court of the county in which the principal office of the financial institution is located in any case where the federal deposit insurance corporation is the receiver and subject to the approval of the commissioner in every other case, to sell any real, personal or mixed property of the financial institution and to compromise and settle any bad or doubtful debts due to or from the financial institution;

(6) In any case where the federal deposit insurance corporation is the receiver, to do all acts and undertakings permitted or required by federal law;

(7) To take all necessary or convenient actions, including the bringing of any administrative action before the commissioner or a hearing examiner or any action in any court of competent jurisdiction, to ascertain any matter concerning the depositors or creditors of the financial institution relative to the receivership of the institution or to proceed against any officer, director or stockholder of the institution to ascertain or enforce any liability thereof or for the determination or adjudication of any other matter involving the institution; and
(8) To do all other acts and undertakings, not inconsistent with the provisions of this article, necessary or convenient to carry out the provisions of this article or to effectively accomplish the intent and purpose of this article.

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

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

(f) The provisions of section three of this article do not in any way inhibit or proscribe the appointment of a receiver under this section, and, whenever a receiver is appointed under this section, any conservatorship theretofore appointed for the same financial institution shall by operation of law immediately terminate.
(g) On a temporary emergency basis, when the commissioner has ascertained that the capital of a financial institution has become substantially impaired and the institution has failed, refused or neglected to make good such impairment to the commissioner's satisfaction or when the commissioner has ascertained that a financial institution is insolvent or reasonably appears about to be insolvent, the commissioner may immediately give written or oral notice of such finding to the involved financial institution and shall immediately thereupon take and retain full and exclusive possession and control of the business and property of the institution and close such institution until a receiver has been appointed for the institution in accordance with the provisions of subsection (a) of this section or until the institution has been permitted by the commissioner to resume its regular business, one or the other of which must be done by the commissioner within thirty days of the actual taking of such possession and control. When the commissioner closes an institution, he shall place an appropriate sign to that effect at the main entrance of the financial institution. Effective as of the closing of the institution a judgment lien, attachment lien or any voluntary or involuntary lien of any kind shall not attach in any way to any asset or other property of the institution and the directors, officers and agents of the institution shall not have any authority to act in any way on behalf of the institution or to convey, transfer, assign, pledge, mortgage or encumber any asset or other property thereof. Any attempt by any director, officer or agent of the financial institution to convey, transfer, assign, pledge, mortgage or encumber or otherwise establish any lien upon any asset or other property of the financial institution or in any manner to prefer any depositor, creditor, shareholder, director, officer, agent or any other person, firm or corporation after the posting of such notice or in contemplation thereof is void.

(h) In any case where a financial institution is insolvent or reasonably appears about to be insolvent and where the commissioner has failed, refused or neglected to act under the provisions of this section, any stockholder, depositor or creditor
of the financial institution may petition the circuit court of the county in which the principal office of the institution is located to order the commissioner to proceed in accordance with the other pertinent provisions of this section, and the court shall expeditiously hear and decide such matter and assume jurisdiction and render a prompt decision with respect to such matter. Any such petitioner shall give notice of the contents of the petition and day, time and place of the hearing by personal service upon the commissioner in the manner prescribed by the West Virginia rules of civil procedure not less than five days before the hearing date. Upon such hearing, if the court finds that the condition of the involved financial institution is that it is insolvent or reasonably appears about to be insolvent and that the commissioner has unreasonably failed, refused or neglected to act thereupon, then the court shall order the commissioner to proceed in accordance with the other pertinent provisions of this section. If the commissioner fails, refuses or neglects to comply with such court order and such order has become final, such failure, refusal or neglect constitutes grounds for the commissioner's removal from office.

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

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

§31A-7-5. Provisions applicable to federal deposit insurance corporation only.

(a) The provisions of this section apply only to those cases in which the commissioner has appointed the federal deposit insurance corporation (hereinafter referred to as the "corporation") as receiver for a financial institution.
(b) When it has been appointed by the commissioner as the receiver for a financial institution pursuant to the provisions of section four of this article, the corporation shall immediately take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Immediately upon taking charge of the financial institution, the corporation, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the corporation. Such title shall pass to and vest in the corporation by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall file a certificate of the corporation’s appointment and acceptance as soon thereafter as possible and have such certificate recorded with the clerk of the county commission of the county in which the principal office of the financial institution is located. There shall not be any bond required of the corporation. Upon the filing of such certificate, the commissioner is forever and fully relieved from all responsibility and liability with respect to the affairs of the financial institution.

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

(d) When the affairs of a financial institution have come under the possession and control of the corporation as receiver for purposes of liquidation, with the consent of the circuit court of the county in which the principal office of the financial institution is located and without approval of the stockholders of the institution, the corporation may sell all or any part of the institution’s assets, real and personal, to
another financial institution, a national bank, the corporation
or any successor institution or the corporation may borrow
from itself, to the extent permitted by federal law, any amount
necessary to facilitate the assumption of deposit liabilities by
a newly chartered or existing financial institution, assigning any
part or all of the assets of the financial institution as security
for such loan.

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

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

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

With the written consent of the commissioner, any re-
ceiver of a financial institution appointed under the provisions
of this article may borrow money from and contract for
loans with any finance or lending agency of the United
States government or any other responsible agency or person
for the purpose of furnishing immediate relief to or aiding in
the reorganization, liquidation or reopening of such financial
institution, protecting and preserving the assets in charge
of the receiver, expediting the making of distributions and the
payment of dividends to depositors and other creditors of
the institution, providing for the expenses of administration
and liquidation or its merger or consolidation with another
financial institution, and paying the claims of secured creditors
where the security is deemed by the receiver and the com-
missoner to be of a value in excess of the debt so secured and
to be for the preservation of the assets of such institution; and
to pledge, hypothecate, assign or transfer to any such respon-
sible agency or person any assets or securities belonging to the
institution as collateral security for the payment of all such
loans, subject to such reasonable terms and conditions imposed
by and agreed upon between the parties.

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

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

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

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

Subject to the other provisions of this section, in any volun-
tary or involuntary proceeding to liquidate a financial insti-
Such financial institution may at any time, but only with the approval of the West Virginia board of banking and financial institutions in the case of a state banking institution and with the approval of the commissioner in the case of all other financial institutions, purchase the business and assets and assume the liabilities of or merge or consolidate with another like financial institution. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, any state banking institution may purchase the business and assets and assume the liabilities of a national banking association or merge or consolidate with a national banking association to form a resulting state bank, the terms and conditions of any such assumption, purchase, merger or consolidation to be first approved by the board. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, a national banking association may convert into a state bank. After any such purchase, merger or consolidation, no other association or corporation may take or use the name of any financial institution participating in such purchase, merger or consolidation.

Unless in conflict with a law of the United States of America, at the completion of any purchase, merger or consolidation permitted by this section and whether such financial institution is organized under the laws of this state or of the United States, the purchasing, merged or consolidated institution is substituted by operation of law in the place and stead of each of the participating financial institutions in all fiduciary relationships, titles, properties, offices, appointments, rights, powers, duties, obligations and liabilities of each participating financial institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary and every other capacity, office or position of each of the
participating financial institutions is by operation of law vested in and devolved upon the purchasing, merged or consolidated institution. Such purchasing, merged or consolidated institution shall take, receive, accept, hold, administer and discharge all grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of or in the name of any such participating institution, whether made, executed or entered before or after such purchase, merger or consolidation and whether to vest or become effective before or after such purchase, merger or consolidation, as fully and to the same effect as if the purchasing, merged or consolidated institution had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such participating institution. All acts taken or performed in its own name or in the name of or in behalf of any financial institution participating in any such purchase, merger or consolidation by any purchasing, merged or consolidated institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary are as good, valid and effective as if this section had been applicable thereto at the time of such taking or performance.

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

Any financial institution may, after thirty days’ notice to the commissioner, cease to transact business and go into voluntary liquidation and convert its assets into money and pay the money to the persons entitled thereto.

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

If the commissioner revokes the certificate of authority, permit or license of any financial institution other than a state bank or if the West Virginia board of banking and financial institutions revokes the certificate, permit or license of a state bank and such financial institution within a reasonable time does not comply with the laws of the state and the requirements of the commissioner or board and thereby fails to secure a new certificate, permit or license to continue in business, the commissioner shall compel such financial institution to go into
liquidation, wind up its affairs and surrender its charter. In any such case, the state attorney general, at the request of the commissioner, shall institute an action in the circuit court of the county in which the principal office of such financial institution is located, in the name of the state of West Virginia, to liquidate, wind up the affairs of and dissolve such financial institution, and such court shall either by itself or through the commissioner or a receiver appointed by the commissioner, fully liquidate, wind up the affairs of and dissolve the financial institution.

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

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

(b) With the approval of the circuit court of the county in which the principal office of the involved financial institution is located, the receiver may assign to any new
financial institution created to carry on the business of the involved financial institution any executory contract or unexpired lease not in default or the default of which has been cured. In any such case, before the court approves any such assignment, the receiver must prove to the court and the court must find that the proposed assignment involves a risk no greater to the new financial institution than that undertaken by the involved financial institution at the time the contract or lease was originally executed.

(c) Notwithstanding any provision in any executory contract or unexpired lease to the contrary, an executory contract or unexpired lease of a financial institution for which a receiver has been appointed under the provisions of this article may not be terminated or modified in any way after the appointment of the receiver solely because of a provision in such contract or lease that is conditioned upon the appointment of a receiver or conservator for the institution or upon the insolvency or financial condition of the institution at any time before a distribution of its proceeds pursuant to section twelve of this article.

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

In all cases where the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of a closed financial institution or a financial institution under receivership, the federal deposit insurance corporation, whether or not it is receiver of such institution, is subrogated to all of the rights of the owners of the deposits against the financial institution in the same manner and to the same extent as subrogation of the corporation is provided for in sections 1811 through 1832, inclusive, of Title XII of the United States Code in the closing of a national banking association.

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

(a) Each receiver shall pay the expenses and just debts of the involved financial institution in the manner specified
by this section. The receiver shall divide all claims against the
institution into the general classes set forth in this section with
the highest priority being given to the first listed class and then
to each subsequent class as it is ranked. All such payments
must be approved by the commissioner and shall be made from
the following general classes in accordance with the following
order of priority:

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

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

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

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

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

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

(b) Before the receiver makes any payment under sub­
section (a) of this section, he shall receive and approve or
reject all claims against the financial institution in the manner
provided for in section thirteen of this article. All ap­
proved claims shall be paid according to the order of priority
set in subsection (a) of this section. With respect to sub-
section (a) of this section, payment in full of all costs provided
for in subdivision (1) must be made before any payment can
be made in any other subdivision; next, payment in full of
all wage claims provided for in subdivision (2) must be made
before any payment can be made in any following subdivision;
next payment in full of all depositors provided for in subdivi-
sion (3) must be made before any payment can be made in any
following subdivision; next, payment in full of all taxes pro-
vided for in subdivision (4) must be made before any payment
can be made in any following subdivision; next, all creditors'
claims provided for in subdivision (5) must be made before
any shareholders can be paid anything; and, last, all remaining
proceeds shall be paid to the shareholders. If at any time
a situation develops in which proceeds are available to be
paid within a particular subdivision but such proceeds are
not sufficient to fully pay the creditors in that class, then
the receiver shall pay each creditor in that class his pro
rata share of the proceeds.

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

§31A-7-13. Claims procedure.

(a) Within a reasonable time after taking possession and
control of the property and business of the financial institu-
tion, the receiver shall require all parties who may have
claims against the financial institution to present their claims
and provide satisfactory proof thereof within such reasonable
time, not to be more than sixty days from the date of receipt
of any mailed notice and not to be more than sixty days from
the date of publication of any published notice, as the re-
ceiver specifies.
(b) Notice shall be given by mailing to each known stockholder, depositor, creditor and other possible claimant of the institution at his last known mailing address, as shown on the books of the financial institution, by certified or registered mail, return receipt requested, a written notice form and proof of claim form, each of which shall be prescribed by the commissioner and must be uniform for all involved parties and must clearly state in plain language that, due to the precarious condition of the financial institution, the receiver has been appointed by the commissioner to preserve and protect the assets thereof and to pay the expenses and just debts thereof and that each involved party must present his claim against the institution along with satisfactory proof thereof, which may be done by returning to the receiver the properly filled out proof of claim form accompanied by a true copy of such proof, within the specified time or he will lose all rights to payment upon the claim. If he does not know the mailing address of an involved party or if any mailed notice is returned undeliverable, the receiver shall make a reasonably diligent effort to ascertain the mailing address and whereabouts of such party and, if it is ascertained, shall mail the notice form and proof of claim form to such party at such address in the manner herein before provided. If the receiver is not able to ascertain the mailing address and whereabouts of any such party, for each such party, and all heirs and assignees thereof, and also for all unknown and unascertainable parties, and all heirs and assignees thereof, who may have claims against the institution, notice shall be given by publication of the prescribed notice form and proof of claim form as a Class III-O 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 in which the principal office of the involved financial institution is located. Any such legal publication and any mailed notice shall contain such additional information and statements concerning the receivership and the financial institution as the commissioner requires or as the receiver, with the consent of the commissioner, considers necessary or advisable.

(c) In the case of all deliverable mailed notices, within sixty days following the date set for submission of such claims and,
in the case of all parties for whom notice by publication has been given, within sixty days following the date set for submission of such claims, the receiver shall approve or reject, in whole or in part, the claims submitted to him. Any party not submitting a claim to the receiver within the prescribed time loses all rights to payment upon the claim. The receiver shall notify in writing each party whose claim has been wholly or partly rejected of such rejection and the reasons therefor not later than fifteen days after the rejection. Within ten days after receipt of such rejection notice, such party may contest the rejection and obtain a fair hearing thereupon in the manner provided for in section fourteen of this article. With the consent of the commissioner, the receiver shall pay all valid claims in the manner provided for in this article.

§31A-7-14. Hearings; judicial review.

Except to the extent another provision of this article expressly authorizes a person to directly take action in a court of competent jurisdiction, any person who is adversely affected by any whole or partial rejection of a claim provided for in section thirteen of this article or by any other order, demand, action, refusal, failure to act, denial or requirement of the receiver under the provisions of this article for the financial institution with which such person is involved and any person who is adversely affected by any order, demand, action, refusal, failure to act, denial or requirement of the commissioner (other than the promulgation of any rules and regulations, which shall be done in accordance with the pertinent provisions of chapter twenty-nine-a of this code) under the provisions of this article is entitled to a hearing thereupon before a hearing examiner appointed by the commissioner for such purpose. Any such hearing shall be conducted and decided by the hearing examiner in the time and manner provided for the hearing of contested cases in article five, chapter twenty-nine-a of this code, and judicial review of the hearing examiner's decision may be had in the time and manner provided for judicial review of contested cases in section four of said article five and in article six of said
23 chapter twenty-nine-a. Each hearing examiner appointed
24 under this section shall be qualified to act as such by reason
25 of his training, education or experience, but a stockholder,
26 creditor, depositor or other person affiliated in any way,
27 directly or indirectly, with the involved financial institution
28 may not be a hearing examiner. All costs and expenses of
29 any such hearing and any judicial review thereof shall be paid
30 as part of the expenses of administration of a receivership
31 as provided for in section twelve of this article.

§31A-7-15. Exclusivity of powers and procedures of article.
1 The provisions of this article provide full and exclusive
2 powers and procedures for the conservatorship, receivership
3 and liquidation of a financial institution, and a receiver or
4 conservator for a financial institution shall not under any
5 circumstances be appointed nor shall a conservatorship, re-
6 ceivership or liquidation of a financial institution under any
7 circumstances be conducted except in the manner provided
8 for in this article.

CHAPTER 40
(S. B. 191—By Mr. Palumbo and Mr. Rogers)

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

AN ACT to repeal section fourteen, article eight, chapter
31 thirty-one-a of the code of West Virginia, one thousand nine
32 hundred thirty-one, as amended; to amend article six, chapter
33 thirty-one of said code by adding thereto a new section,
34 designated section forty-four; to amend and reenact section
35 ten, article seven and section four, article ten, both of said
36 chapter thirty-one; and to amend article four of said chapter
37 thirty-one-a by adding thereto a new section, designated
38 section forty-three, all relating to allowing building and loan
39 associations, industrial banks, credit unions and banking
40 institutions to permit the owner of a deposit, share or account
41 on which interest or dividends are paid to make withdrawals
42 by negotiable or transferable instruments for the purpose of
making transfers to third parties if such deposit, share or account consists solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational or similar purposes and which is not operated for a profit.

Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

Article
7. Industrial Banks and Industrial Loan Companies.
10. Credit Unions.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

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

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

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

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

(a) The provisions of sections thirteen and fourteen, article
four, chapter thirty-one-a to the contrary notwithstanding, and subject to the provisions of subsection (b) of this section, in addition to the general powers conferred upon corporations by the laws of this state and subject to the restrictions, rules and regulations of the federal deposit insurance corporation and the provisions of chapter sixteen, Title 12 of the United States Code, each industrial bank organized pursuant to this article shall have power to exercise in addition to the general powers conferred upon industrial loan companies under the provisions of section eleven of this article and in addition thereto shall have the power to receive deposits from the general public only as long as such deposits are insured by the federal deposit insurance corporation, but shall not be depositories of funds from the government of the United States or from any of its agencies or political subdivisions or from the state of West Virginia or from any of its agencies or political subdivisions or from any other governmental agency. An industrial bank may permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties if such deposit or account consists solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational or similar purposes and which is not operated for a profit.

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

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

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

3. Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person,
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42 firm or corporation in excess of twenty percent of the
43 aggregate paid-up capital and surplus of such industrial
44 bank;

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

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

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

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

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

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

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

79 (11) Receive checking accounts or demand deposits.
ARTICLE 10. CREDIT UNIONS.


1 A credit union shall have the following powers:

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

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

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

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

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

7 (f) To borrow money as hereinafter indicated;

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

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-43. Negotiable order of withdrawal accounts allowed.

1 A banking institution may permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties if such deposit or account consists solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational or similar purposes and which is not operated for a profit.
AN ACT to repeal section fifteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections fifteen and sixteen of said article sixteen, all relating to nonintoxicating beer and abolishing the concurrent jurisdiction of courts of record to revoke or suspend beer licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

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

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

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

1 The commissioner may revoke, or suspend, the license
2 of any licensee:
3 (a) For any of the reasons and upon any grounds de-
4 clared to be unlawful by section thirteen of this article;
5 or
6 (b) For any reason or ground upon which a license
7 might have been refused in the first instance had the
8 facts at the time of the issuance of such license been
9 known to the commissioner; or
10 (c) For the violation of any rule, regulation or order
11 promulgated by the commissioner under authority of this
12 article.
13 In addition to the grounds for revocation or suspension
14 of a license above set forth, conviction of the licensee of
any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for revocation or suspension of a license.

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

No license shall be issued to any person who has formerly held a license, under the provisions of this article, which has been revoked by the commissioner, within a period of two years from the date of such revocation; nor shall any license be issued hereunder to any person who was an officer or stockholder of a corporation whose license was revoked as aforesaid, nor to any person who was a member of a partnership or association whose license was revoked as aforesaid, nor to the wife or husband of any person whose license was revoked as aforesaid, within said period of two years from the date of revocation; nor shall any license be issued to any corporation having a stockholder or director who has had a license revoked as aforesaid, within said period of two years from the date of the revocation of such person's license.

CHAPTER 42

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

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

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the regulation of trade and the holding of bingo games by licensed charitable or public service organizations; establishing a legislative intent; defining terms; providing for applications for bingo licenses and qualifications of applicants; providing for annual, limited occasion, and state fair bingo licenses; providing for collection and application of certain fees; establishing exemption from certain imposition of certain taxes and fees; specifying information to be included in application; providing
for amendment of license under specified circumstances; permitting licensee to adopt rules and regulations governing conduct of games; limiting prizes to be awarded; providing for certain bingo game operator or concessionaire requirements; providing for exceptions to concessionaire requirements; establishing limitations on payment of rent for premises for conduct of bingo; providing for a limit upon bingo expenses payable from gross receipts; providing limitations on dispersement of proceeds and time period for said dispersement; allowing for changes in dispersement and extension of such time period; prohibiting payment from gross receipts of certain expenses; allowing only certain individuals to conduct games; prohibiting payment of compensation for conducting games; requiring the keeping of records for a three-year period; permitting audit of records; permitting advertisement of bingo occasions; requiring the filing of financial reports by licensee; declaring proceeds accruing to state fair board to be for charitable or public service purposes; empowering state fair board to promulgate rules and regulations for the conduct of bingo games at the state fair; exempting state fair bingo licensee from certain provisions; requiring filing of copy of licenses with county commission and making license application available for public inspection; providing for administration of article by tax commissioner; establishing provisions for suspension, denial, revocation of or refusal to renew license by commissioner in accordance with chapter twenty-nine-a of this code, including emergency suspension; requiring commissioner to promulgate rules and regulations; establishing procedure for and effect of local option election; prohibiting certain acts by convicted persons; establishing requirements concerning use of bingo equipment; establishing effective date of article; providing for severability of any provision declared invalid; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty, to read as follows:
ARTICLE 20. CHARITABLE BINGO.

§47-20-1. Legislative intent.

§47-20-2. Definitions.

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

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

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

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

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

§47-20-8. Amendment of license.

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

§47-20-10. Limits on prizes awarded.


§47-20-13. Concessions exception.

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

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

§47-20-16. Records; commissioner audit.

§47-20-17. Advertising.

§47-20-18. Fraud; penalties.

§47-20-19. Obtaining license fraudulently; penalty.

§47-20-20. Violation of provisions; penalties.


§47-20-22. State fair bingo license; rules and regulations.

§47-20-23. Administration; rules and regulations.

§47-20-24. Filing of reports.

§47-20-25. Filing of copy of license; application open to public inspection.

§47-20-26. County option election.

§47-20-27. Prohibited acts by convicted individuals and corporations.


§47-20-29. Effective date.

§47-20-30. Severability.

§47-20-1. Legislative intent.

1 The Legislature, in recognition of the recreational enjoyment the people of West Virginia receive from playing bingo and of the need charitable and public service organizations have for
a practicable way of raising funds, declares its intent to grant
the privilege of holding bingo games to those organizations
which qualify for a license as provided below.

§ 47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

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

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

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

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

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

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

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

(5) By lessening the burdens borne by government or volun-
tarily supporting, augmenting or supplementing services which
government would normally render to the people; or
(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

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

(d) “Charitable or public service organization” means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

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

(e) “Commissioner” means the state tax commissioner.

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

(g) “Conduct” means to direct the actual playing of a bingo
game by activities including, but not limited to, handing
out bingo cards, collecting fees, drawing the numbers, an­
nouncing the numbers, posting the numbers, verifying winners
and awarding prizes.

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

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

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

(k) “Person” means any individual, association, society,
incorporated or unincorporated organization, firm, partnership
or other nongovernmental entity or institution.

(l) “Patron” means any individual who attends a bingo
occasion other than an individual who is participating in
the conduct of the occasion or in the operation of any con­
cession, whether or not the individual is charged an entrance
fee or plays any bingo games.

(m) “Qualified recipient organization” means any bona
fide, not for profit, tax-exempt, as defined in subdivision (d)
of this section, incorporated or unincorporated association
or organization which is organized and functions exclusively
to directly benefit a number of people as provided in sub­
paragraphs (l) through (7), subdivision (c) of this section.
“Qualified recipient organization” includes without limitation
any licensee which is organized and functions exclusively as
provided in this subdivision.

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

Any charitable or public service organization which has
been in existence in this state two years prior to filing an
application for a bingo license issued pursuant to section
four or five of this article may hold bingo occasions in
accordance with the provisions of this article during such
time as it holds a valid license.

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

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

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

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

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

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

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

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

A limited occasion license is valid only for the time
period specified in the application and entitles only the
licensee to hold a bingo occasion once every twenty-four
hours for a time period not to exceed two weeks. Two or
more organizations may hold a joint bingo occasion provided
each participating organization has been granted a limited
occasion bingo license for such jointly held occasion. No
bingo occasion held pursuant to a limited occasion license
may exceed twelve hours in duration. Each charitable or
public service organization which desires to hold bingo
occasions pursuant to this section, or any of its auxiliaries or
other organizations otherwise affiliated with it shall obtain a
limited occasion license notwithstanding the fact that it holds
a valid annual license: Provided, That no licensee which holds
an annual license may obtain more than one limited occasion
license.
Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.

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

All bingo occasions shall be open to the general public.

No person under eighteen years of age may participate as a player in any bingo games.

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

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

(b) The gross proceeds derived from the conduct of a bingo occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemp-
tion provided in this subsection does not apply to state fair bingo proceeds.

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

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

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

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

c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted;

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

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

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

(2) Being in existence in this state two years prior to filing an application for a bingo license;
(f) The day or days of the week, and the time or times when the bingo occasions will be held;

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

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

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

(j) A statement or statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct any part of the bingo games or concessions operated in conjunction therewith;

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

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

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

(l) A list and description of estimated expenses to be incurred in connection with the holding of the bingo occasions and any concessions operated and the name and address of each payee. If a concession is operated in accordance with the provisions of section thirteen of this article, a copy of any written agreement or an explanation of any oral agreement providing for any type of remuneration to be received by the concession operator shall be attached to the application;
§47-20-8. Amendment of license.

If circumstances beyond the control of the licensee organization prohibit it from holding any bingo occasion in accordance with the information provided by it in its license application form, the licensee organization may request approval by the commissioner to:

(a) Modify the holding of one or more bingo occasions held pursuant to an annual license if the changes are temporary; or

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

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

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

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

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

§47-20-10. Limits on prizes awarded.

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


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


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

§47-20-13. Concessions exception.

A licensee may allow any individual, firm, partnership or
corporation to operate concessions in conjunction with bingo
occasions, and to be compensated for such operation, in ac-
cordance with the following provisions:
(a) The licensee organization is one which meets or holds functions other than bingo occasions on a regular basis; and

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

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

(d) The terms of the agreement under which the individual, firm, partnership or corporation operates the concession at the bingo occasion are the same terms under which the concession is operated at the regular meetings or functions: 

Provided, That a copy of such agreement is filed at the time the application is made and any changes thereto are filed within ten days of being made.

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

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

(a) No owner or lessee, including his agent, of premises on which bingo occasions are held by one or more licensees holding annual bingo licenses may receive rent or other fee in any amount for the holding of more than two bingo occasions per week on his premises. No owner or lessee, including his agent, of premises on which bingo occasions are held by one or more licensees holding limited occasion licenses may receive rent or other fee in any amount for the holding of more than forty-two bingo occasions per year on his premises: 

Provided, however, That the total number of bingo occasions for which any owner or lessee, including his agent, may receive rent or other fee in any one year may not exceed one hundred and four.

(b) No licensee may receive, either directly or indirectly,
rent or other fee in any amount for permitting its premises
to be used by any person, including any auxiliaries or other
organizations or entities otherwise associated with the licensee,
to hold a bingo occasion.

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

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

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

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

(2) The cost of custodial services;

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

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

(5) The cost of hiring security personnel.

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

(c) The cost of any refreshments, souvenirs or any
other item sold or otherwise provided through any concession
to the patrons may not be paid for out of the proceeds from
the bingo occasion. The licensee shall expend all net bingo
proceeds and any interest earned thereon for the charitable
or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were held. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net bingo proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, improvement, maintenance or repair of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are so expended.

§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its bingo operations. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for rea-
§47-20-17. Advertising.

A licensee may advertise its bingo occasions in a manner reasonably necessary to promote the occasion.

§47-20-18. Fraud; penalties.

In addition to any other offense set forth in this code, any person who or licensee which knowingly conducts or participates in a fraudulently or deceptively conducted bingo game with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars, or imprisoned in the penitentiary not less than one, nor more than five years, or both fined and imprisoned.

§47-20-19. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any individual, association, organization or corporation which knowingly obtains or assists another in obtaining a bingo license under false, deceptive or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars.

§47-20-20. Violation of provisions; penalties.

Any person who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars. Any individual who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon a second or subsequent conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned not more than one year or both fined and imprisoned.


The Legislature declares that the net proceeds of any bingo
game which accrue to the West Virginia state fair are con-
sidered used for charitable or public service purposes as de-
defined in section two of this article. Any proceeds allowed by
the state fair board to be paid to or retained by the licensee
are deemed to be expenses incurred by the state fair board.

§47-20-22. State fair bingo license; rules and regulations.

Any person who has held bingo games on a regular basis
for at least two years prior to the filing of an application may
apply to the tax commissioner for a state fair bingo license to
hold bingo occasions at the West Virginia state fair. A license
fee of four thousand dollars shall be paid to the commissioner
for a state fair bingo license. The provisions of sections ten,
eleven, twelve and fifteen of this article do not apply to a
state fair bingo license. No state fair bingo license may be
issued unless the application includes a copy of any lease
or agreement entered into between the state fair board and
the applicant, or the applicant and the state fair board's
lessee. The state fair board may adopt reasonable rules and
regulations, not inconsistent with or in violation of the pro-
visions of this article, to govern the holding of bingo games
at the state fair.

§47-20-23. Administration; rules and regulations.

(a) The tax commissioner shall administer the provisions of
this article in accordance with the provisions of chapter twenty-
nine-a of this code.

(b) The commissioner shall deny an application for a
license if he finds that the issuance thereof would be in viola-
tion of the provisions of this article.

(c) The commissioner may revoke, suspend or refuse to
renew a license if the licensee or any member of a licensee
organization has been convicted pursuant to section eighteen
or nineteen of this article and the commissioner finds that
it would be in the public interest to do so; or if the licensee
has violated any of the provisions of this article: Provided,
That before revoking or suspending a license issued under
the authority of this article, the commissioner shall give at
least ten days, three days for a limited occasion or state fair
license, notice to the licensee. Notice shall be in writing, shall state the reason for revocation or suspension and shall designate a time and place when the licensee may show cause why the license should not be revoked or suspended. Notice shall be sent by certified mail to the address of the licensee or served by certified mail or by personal or substituted service on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, produce evidence in its behalf and be represented by counsel. A decision of the commissioner revoking or suspending a license is subject to judicial review upon the appeal of a licensee.

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article.

(f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial, revocation, suspension of or refusal to renew a license hereunder.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a bingo license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending a bingo license in the following manner:

(1) An emergency order may be issued only when the commissioner believes that:

(a) There has been a criminal violation of this article;

(b) Such action is necessary to prevent a criminal violation of this article; or
(c) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

(2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

(3) The emergency order is effective immediately upon issuance and service upon the licensee.

(4) Within five days after issuance of an emergency order, the commissioner shall set a time and place for a hearing wherein the licensee may appear and show cause why its license should not be revoked.

§47-20-24. Filing of reports.

Each licensee holding an annual license shall file with the tax commissioner quarterly and an annual financial report summarizing its bingo operations for the time period covered by the report. Each quarterly report shall be filed within twenty days after the end of the quarter which it covers. The annual report shall be filed within thirty days after the expiration of the license under which the operations covered by the report were held.

Each licensee holding a limited occasion license or state fair license shall file with the tax commissioner a financial report summarizing its bingo operations for the license period within thirty days after the expiration of the license under which the operations covered by the report are held. The reports shall contain the name, address and social security number of any individual who receives during the course of a bingo occasion prizes the aggregate value of which exceeds one hundred dollars, and other information required by the commissioner.

§47-20-25. Filing of copy of license; application open to public inspection.

Whenever a license is granted pursuant to this article, the
commissioner shall cause a copy of the license to be filed and recorded with the clerk of the county commission of the county in which the bingo occasions are to be held. A copy of the application shall be made available for public inspection in the office of the commissioner.

§47-20-26. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: Provided, That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least ten percent of the persons qualified to vote within said county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION
RESPECTING THE CONDUCT OF
BINGO GAMES FOR
CHARITABLE PURPOSES
IN ............. ............. COUNTY,
WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in ............. ............. county, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at (1) a special or (2) the next primary, general or special election (the petition shall specify (1) or (2)) upon the following question: Shall the provisions of article twenty, chapter forty-seven of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect in __ __ __ __ county, West Virginia?

(Each person signing must specify either his post-office address or his street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the county. The notice shall be so published within fourteen consecutive days next preceding the election.

Each person qualified to vote in the county at any primary, general or special election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary, general or other special election, it shall be held in connection with and as a part of that primary, general or special election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the playing of bingo to raise money for charitable
or public service organizations continue in effect in county of West Virginia?

☐ Yes  ☐ No

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

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, sooner than five years after the last local option election.

§47-20-27. Prohibited acts by convicted individuals and corporations.

Any individual, organization, association or corporation convicted of any felony, or a misdemeanor for a gambling offense, is prohibited from directly or indirectly obtaining a bingo license, conducting a bingo game, operating a concession, or leasing or providing to a licensee organization any premises where bingo occasions may be held within ten years from said conviction.


A licensee may use only bingo equipment which it owns or which it borrows without compensation, or leases for a reasonable and customary amount, from another licensee.

§47-20-29. Effective date.

The effective date of this article is the fifteenth day of August, one thousand nine hundred eighty-one.

§47-20-30. Severability.

If, for any reason, any section, sentence, clause, phrase or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections,
sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every article, section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

CHAPTER 43
(S. B. 140—By Mr. Palumbo)

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

AN ACT to amend and reenact section ten, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revenue bonds issued by urban renewal authorities and the interest rates on such bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. SLUM CLEARANCE.


1 (a) An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

12 (1) Exclusively from the income, proceeds and revenues of the redevelopment project financed with the proceeds of such bonds; or
(2) Exclusively from the income, proceeds and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds: Provided, That any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other sources, or a mortgage of any redevelopment project or projects of the authority.

(b) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county or the state and neither the municipality, the county nor the state shall be liable thereon, nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority acquired for the purposes of this article. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from all taxes. Such bonds need not be offered by the authority to the state sinking fund commission at any time and an authority shall not be required to turn over any surplus or sinking funds to the state sinking fund commission.

(c) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding twelve per centum per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such
terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) The bonds shall be sold at not less than par at public sale held after notice 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 area of operation. Such publication shall be made at least ten days prior to such sale. The notice may be published in such other medium of publication as the authority may determine: Provided, That such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any project or projects are sold to the federal government, the balance of such bonds may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

(e) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this article.
CHAPTER 44
(Com. Sub. for H. B. 1187—By Mr. Burdette and Miss Shuman)

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

AN ACT to repeal sections four, four-a, seven and eight, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article one of said chapter; and to further amend said chapter by adding thereto a new article, designated article two-b, all relating to abolishing the state licensing board for child welfare agencies; transferring the powers and duties of the board to the commissioner of welfare; stating policy and purposes; defining terms; providing for licenses and approvals of all residential child care facilities, day care centers and child placing agencies; providing certain exceptions; requiring the commissioner to promulgate rules and regulations; empowering the commissioner to seek court injunctions, to make licenses conditional and to permit waivers and variances to requirements; providing for applications for licenses and approvals; requiring the commissioner to investigate child care facilities; providing for revocation of licenses or approvals and for provisional licensing and approval; empowering the commissioner to close facilities in certain cases; providing for administrative and judicial review; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Purposes; Definitions.

ARTICLE 1. PURPOSES; DEFINITIONS.
§49-1-1. Purpose.
§49-1-5. Definitions of other terms.
§49-1-1. Purpose.

(a) The purpose of this chapter is to provide a comprehensive system of child welfare throughout the state which will assure to each child such care and guidance, preferably in his or her home, and will serve the spiritual, emotional, mental and physical welfare of the child; preserve and strengthen the child's family ties whenever possible with recognition of the fundamental rights of parenthood and with recognition of the state's responsibility to assist the family in providing necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and the protection of the welfare of the general public. In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody, care and discipline consistent with the child's best interests and other goals herein set out.

(b) The child welfare service of the state shall be administered by the state department of welfare.

The state department of welfare is designated as the agency to cooperate with the United States department of health & human services and United States department of justice in extending and improving child welfare services, to comply with regulations thereof, and to receive and expend federal funds for these services.

§49-1-5. Definitions of other terms.

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

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

(3) "Commissioner" means the commissioner of welfare;

(4) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm,
corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including without limitation, private homes, or any facility that provides care for unmarried mothers and their children;

(5) "Custodian" means a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;

(6) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee the judge or judges of the circuit court may designate one or more magistrates of the county to perform the functions and duties which may be performed by a referee under this chapter;

(7) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided; and

(8) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding.

ARTICLE 2B. DUTIES OF COMMISSIONER OF WELFARE FOR CHILD WELFARE.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
§49-2B-3. License and approval requirements.
§49-2B-5. Penalties; injunctions.
§49-2B-6. Conditions of licensure and approval.
§49-2B-7. Waivers and variances to rules and regulations.
§49-2B-8. Application for license or approval.
§49-2B-10. Investigating authority.
§49-2B-12. Closing of facilities by the commissioner; placement of children.
§49-2B-14. Annual reports; directory; licensing reports and recommendations.
§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

It is the policy of the state to assist a child and his or her family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of absence, temporary or permanent, of parents or the separation of a child from the family unit, for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing as close as possible to society’s expectations of a family’s care and nurturing of its child. The state has a duty to assure that proper and appropriate care is given and maintained.

Through licensing and approving child care facilities, and child welfare agencies, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensing and approval processes must therefore continually balance the child’s rights and need for protection with the interests, rights and responsibility of the service providers.

In order to carry out the above policy, the Legislature enacts this article to protect and prevent harm to children separated from their families and to enhance their continued growth and well-being while in care.

The purposes of this article are:

(i) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care; (ii) to establish statewide rules for regulating programs as defined in this article; and (iii) to encourage and assist in the improvement of child care programs. In order to carry out these purposes, the powers of the child welfare licensing board, created by chapter nineteen, acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of welfare, along with the other powers granted by this article.


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

“Approval” means a finding by the commissioner that a facility operated by the state has met the requirements set
forth in the rules and regulations promulgated pursuant to this article.

"Certificate of approval" means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules and regulations promulgated pursuant to this article.

"Certificate of license" means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

"Child" means any person under eighteen years of age.

"Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements.

"Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

"Commissioner" means the commissioner of welfare.

"Day care center" means a facility operated by a child welfare agency for the care of seven or more children on a non-residential basis.

"Department" means the state department of welfare.

"Facility" means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

"Foster family group home" means a private residence
which is used for the care on a residential basis of six, seven
or eight children who are unrelated by blood, marriage or
adoption to any adult member of the household.

"Foster family home" means a private residence which is
used for the care on a residential basis of no more than five
children who are unrelated by blood, marriage or adoption
to any adult member of the household.

"Group home" means any facility, public or private, which
is used to provide residential care for ten or fewer children.

"Group home facility" means any facility, public or private,
which is used to provide residential care for eleven or more
children.

"License" means a grant of official permission to a facility
to engage in an activity which would otherwise be prohibited.

"Residential child care" or "child care on a residential
basis" means child care which includes the provision of night-
time shelter and the personal discipline and supervision of a
child by guardians, custodians or other persons or entities on
a continuing or temporary basis.

"Rule" means a statement issued by the commissioner of
the standard to be applied in the various areas of child care.

"Variance" means a declaration that a rule may be ac-
complished in a manner different from the manner set forth in
the rule.

"Waiver" means a declaration that a certain rule is inappli-
cable in a particular circumstance.

§49-2B-3. License and approval requirements.

(a) Any person, corporation or child welfare agency other
than a state agency, which operates a residential child care
facility, a child placing agency or a day care center shall have
a license.

(b) Any residential child care facility, day care center or
any child placing agency operated by the state shall obtain
approval of its operations from the commissioner. Such fa-
cilities and placing agencies shall maintain the same stan-
dards of care applicable to licensed facilities, centers or placing
agencies of the same category.

(c) This section does not apply to:

(1) a kindergarten, pre-school or school education program
which is operated by a public school or which is accredited by
the state department of education, or any other kindergarten,
pre-school or school programs which operate with sessions not
exceeding four hours per day for any child;

(2) a facility operated for occasional nonresidential care of
children for brief periods while parents are shopping, engaging
in recreational activities, attending religious services or en-
gaging in other business or personal affairs;

(3) summer recreation camps operated for children attend-
ing sessions for periods not exceeding thirty days; or

(4) hospitals or other medical facilities which are primarily
used for temporary residential care of children for treatment,
convalescence or testing.


The commissioner shall promulgate rules and regulations
for the purpose of carrying out the provisions of this article
within one hundred eighty days of the effective date hereof
pursuant to the provisions of chapter twenty-nine-a of this
code. The rules and regulations of the child welfare licensing
board which are in effect on the date of its termination shall
continue in full force and effect until the rules and regulations
promulgated by the commissioner become effective.

The commissioner shall review the rules and regulations
promulgated pursuant to the provisions of this article at least
once every five years, making revisions when necessary or
convenient.

§49-2B-5. Penalties; injunctions.

(a) Any individual or corporation which operates a child
welfare agency, residential child care facility or day care center
without a license when a license is required is guilty of a mis-
demeanor, and, upon conviction thereof, shall be punished by
imprisonment in jail not exceeding one year, or a fine of not
more than five hundred dollars, or both fined and imprisoned.

(b) Where a violation of this article or a rule or regulation
promulgated by the commissioner may result in serious harm
to children under care, the commissioner may seek injunctive
relief against any person, corporation, child welfare agency,
child placing agency, day care center or governmental official
through proceedings instituted by the attorney general, or the
appropriate county prosecuting attorney, in the circuit court
of Kanawha County or in the circuit court of any county where
the children are residing or may be found.

§49-2B-6. Conditions of licensure and approval.

(a) A license or approval is effective for a period of two
years from the date of issuance, unless revoked or modified to
provisional status based on evidence of a failure to comply with
the provisions of this article or any rules and regulations
promulgated pursuant to this article. The license or approval
shall be reinstated upon application to the commissioner and
a determination of compliance.

The license or approval issued under this article is not
transferable and applies only to the facility and its location
stated in the application. The license or approval shall be pub-
licly displayed, except foster family homes, foster family group
homes and group homes shall be required to display licenses
upon request rather than by posting.

(b) A provisional license or approval may be issued as:

(i) An initial license or approval to a new facility which
has been unable to demonstrate full compliance because the
facility is not fully operational, or

(ii) A temporary license or approval to an established licens-
ed facility which is temporarily unable to conform to the pro-
visions of this article or the rules and regulations promulgated
hereunder.

A provisional license or approval shall expire six months
from the date of issuance and may be reinstated no more than
two times. The issuance of a provisional license or approval
§49-2B-7. Waivers and variances to rules and regulations.

Waivers or variances of rules or regulations may be granted by the commissioner if the health, safety or well-being of a child would not be endangered thereby. The commissioner shall promulgate by rule or regulation criteria and procedures for the granting of waivers or variances so that uniform practices may be maintained throughout the state.

§49-2B-8. Application for license or approval.

Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license or approval to operate child care facilities regulated by this article. Applications for license or approval shall be made separately for each child care facility to be licensed or approved.

The commissioner may prescribe forms and reasonable application procedures. Before issuing a license or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, and consideration of the proposed plan for child care from intake to discharge.

The commissioner shall make a decision on each appli-
cation within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.


The commissioner shall provide supervision to ascertain compliance with the rules and regulations promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The commissioner shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible. The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of this article by providing such reports and assistance as may be requested by the commissioner.

§49-2B-10. Investigating authority.

The commissioner shall enforce the provisions of this article. An on-site evaluation of every facility regulated pursuant to this article shall be conducted no less than once per year by announced or unannounced visits. The commissioner shall have access to the premises, personnel, children in care and records of the facility, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses and approvals shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing or approval. When a complaint is received by the commissioner alleging violations of licensure or approval requirements, the commissioner shall investigate the allegations. The commissioner may notify the facility's director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

The commissioner may enter any unlicensed or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present.


The commissioner may revoke or make provisional the
§49-2B-12. Closing of facilities by the commissioner; placement of children.

When the commissioner finds that the operation of a child care facility constitutes an immediate danger of serious harm to children served by the facility, the commissioner shall issue an order of closure terminating operation of the facility. When necessary, the commissioner shall place or direct the placement of the children in a residential child care facility which has been closed into appropriate facilities. A facility closed by the commissioner may not operate pending administrative or judicial review without court order.


Any person, corporation, governmental official or child welfare agency, aggrieved by a decision of the commissioner made pursuant to the provisions of this article may contest the decision upon making a request for a hearing by the commissioner within thirty days of receipt of notice of the decision. Administrative and judicial review shall be made in accordance with the provisions of article five, chapter twenty-nine-a of this code. Any decision issued by the commissioner may be made effective from the date of issuance. Immediate relief therefrom may be obtained upon a showing of good cause made by verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected facility or child welfare agency may be located. The pendency of administrative or judicial review shall not prevent the commissioner from obtaining injunctive relief pursuant to section five of this article.

§49-2B-14. Annual reports; directory; licensing reports and recommendations.

The commissioner shall submit on or before the first day of January of each year a report to the governor, and upon request to members of the Legislature, concerning the regula-
tion of child welfare agencies, child placing agencies, day care
centers and child care facilities during the year. The report
shall include, but not be limited to, data on the number of
children and staff at each facility, applications received, types
of licenses and approvals granted, denied, made provisional
or revoked and any injunctions obtained or facility closures
ordered.

The commissioner also shall compile annually a directory
of licensed and approved child care providers including a brief
description of their program and facilities, the program's ca-
pacity and a general profile of children served.

Licensing reports and recommendations for licensure which
are a part of the yearly review of each licensed facility shall
be sent to the facility director. Copies shall be available to
the public upon written request to the commissioner.

CHAPTER 45
(S. B. 18—By Mr. Palumbo)

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

AN ACT to amend and reenact section one-b, article five, chapter
forty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the jurisdiction of
municipal courts over persons under eighteen years of age;
traffic and curfew ordinances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1b. Jurisdiction of municipal courts over persons under
eighteen years of age.

1 Notwithstanding any other section of this code to the
2 contrary, municipal courts shall have concurrent juvenile
jurisdiction with the circuit court only for alleged violations of municipal ordinances regulating traffic, except that municipal courts shall have no jurisdiction to impose a sentence of confinement for the violation of such laws.

Any municipal court of a municipality which has enacted an enforceable curfew ordinance may assume jurisdiction of a juvenile charged with violation of such ordinance and make any disposition thereof which could properly be made by a circuit court exercising its juvenile jurisdiction, except that municipal courts shall have no jurisdiction to impose a sentence of confinement for the violation of such laws.

CHAPTER 46

(Ch. 46

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

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§ 1. Finding and declaring certain claims against the supreme court—mental hygiene fund; office of the state auditor—representation of needy persons fund; board of chiropractic examiners; board of regents; department of corrections; department of culture and history; department of finance and administration; department of health; department of public safety; division of vocational rehabilitation; nonintoxicating beer commission; office of the governor; state tax department; department of highways; department of motor vehicles; and alcohol beverage control commissioner, to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims con-
Concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Supreme Court—Mental Hygiene Fund:

TO BE PAID FROM GENERAL REVENUE FUND

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[Ch. 46]
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(b) Claims against the Office of the State Auditor—Needy Persons Fund:

TO BE PAID FROM GENERAL REVENUE FUND

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(c) **Claim against the Board of Chiropractic Examiners:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) Kanawha Office Equipment, Inc. | 608.00

(d) **Claims against the Board of Regents:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) Sue H. Ellis | 948.00
(2) Jamison Electrical Construction Co. | 21,662.27
(3) Kanawha Office Equipment, Inc. | 2,028.00
(e) **Claims against the Department of Corrections:**

TO BE PAID FROM GENERAL REVENUE FUND

1. Appalachian Regional Hospital ................. 1,243.25
2. Law Enforcement Ordnance Company ............... 5,065.30
3. Southern West Virginia Clinic ................... 185.00
4. Tony J. Veltri, d/b/a Farmers Delight Co. ....... 5,172.78
5. Weirton General Hospital ................... 4,323.05

(f) **Claim against the Department of Culture and History:**

TO BE PAID FROM GENERAL REVENUE FUND

1. IBM Corporation .................................. 658.00

(g) **Claims against the Department of Finance and Administration:**

TO BE PAID FROM GENERAL REVENUE FUND

1. Capital Business Interiors, Div. of Capitol Business Equipment, Inc. ... 141.00
2. Uarco, Inc. ........................................... 2,744.95

(h) **Claims against the Department of Health:**

TO BE PAID FROM GENERAL REVENUE FUND

1. American Hospital Supply ........................ 424.32
2. Appalachian Engineers, Inc. ..................... 1,325.00
3. Dill’s Mountaineer Associates, Inc. ............ 2,406.00
4. Barbara Gruber .................................. 3,556.66
5. Huntington Water Corporation .................. 543.52
6. Lourdes Lezada ................................... 6,000.00
7. Shaeffer and Associates ......................... 576.00
8. Three Printers, Inc. .......................... 2,347.27
9. Louis B. Varney, d/b/a Tri-State Inspection Service .................. 4,250.00
10. Harold L. Weber, Jr. .......................... 9,791.91
(11) William Paul Hall, Sr., Admin. of the 
Estate of William Paul Hall, Jr. 11,783.19

(i) Claim against the Department of Public Safety:
TO BE PAID FROM GENERAL REVENUE FUND
(1) Mary Louise Szelong 1,100.00

(j) Claims against the Division of Vocational Rehabilitation:
TO BE PAID FROM GENERAL REVENUE FUND
(1) Clinic Private Division, University of Virginia 842.00
(2) Heck's, Inc. 245.56

(k) Claim against the Nonintoxicating Beer Commission:
TO BE PAID FROM GENERAL REVENUE FUND
(1) Falls City Industries, Inc., formerly Falls City Brewing Co. 156.75

(l) Claim against the Office of the Governor:
TO BE PAID FROM GENERAL REVENUE FUND
(1) Empire Foods, Inc. 3,165.50

(m) Claim against the State Tax Department:
TO BE PAID FROM GENERAL REVENUE FUND
(1) Consolidated Contractors 1,600.00

(n) Claims against the Department of Highways:
TO BE PAID FROM STATE ROAD FUND
(1) A. J. Baltes, Inc. 588,271.73
(2) Maria Caterina Anania 9,000.00
(3) Robert S. Atkinson and Evelyn Atkinson 4,948.90
(4) Russell Lee Barkley 1,080.00
(5) Harry H. Barrett 68.30
(6) Black Rock Contracting, Inc. 8,067.79
| 461  | (7) Eli Blankenship, Jr., Admin. of the Estate of Johnny Blankenship, deceased | 14,213.86 |
| 462  |  |  |
| 463  |  |  |
| 464  | (8) The Board of Education of the County of Kanawha | 1,694.81 |
| 465  |  |  |
| 466  | (9) Virginia Burton | 199.14 |
| 467  | (10) Homer Bush | 415.00 |
| 468  | (11) George Carper | 135.94 |
| 469  | (12) John F. Clark | 71.93 |
| 470  | (13) Coleman Oil Company, Inc. | 1,111.82 |
| 471  | (14) Bertie K. Cox | 180.25 |
| 472  | (15) Melvin Dingess and Corenia Dingess | 2,500.00 |
| 473  | (16) Duling Brokerage, Inc. | 115.59 |
| 474  | (17) Joe B. Eller | 120.62 |
| 475  | (18) Edward Engel | 48.34 |
| 476  | (19) Daniel C. Farley, Jr. | 1,500.00 |
| 477  | (20) Robert L. Ferguson, Executor of the Estate of Elizabeth L. Ferguson, deceased | 5,000.00 |
| 478  |  |  |
| 479  | (21) Martin V. Gaston, Sr. | 942.00 |
| 480  |  |  |
| 481  | (22) Elizabeth Smith Grafton | 9,000.00 |
| 482  | (23) Drema D. Greenlee and Stephen E. Greenlee | 54.00 |
| 483  |  |  |
| 484  | (24) Walter A. Henriksen | 458.35 |
| 485  | (25) Deborah J. Hodges | 43.21 |
| 486  | (26) Kim Hope | 47.27 |
| 487  | (27) Theresa Kurucz | 337.98 |
| 488  | (28) Jean C. Littlepage | 145.17 |
| 489  | (29) Carroll Lynch | 1,763.83 |
| 490  | (30) Jonathan E. McDonald | 2,000.00 |
| 491  | (31) Jonathan E. McDonald, Admin. of the Estate of James Edgar McDonald, deceased | 10,630.50 |
| 492  |  |  |
| 493  |  |  |
| 494  | (32) Jonathan E. McDonald, Admin. of the Estate of Penny Jo McDonald, deceased | 10,647.70 |
| 495  |  |  |
| 496  |  |  |
| 497  | (33) S. A. Meadows | 87.00 |
| 498  | (34) Cleo Lively Moore | 5,000.00 |
| 499  | (35) Franklin L. Dalton | 100.00 |
| 500  | (36) Catherine Nestor | 11,196.50 |
### Claims

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<td>Jack H. Parsons, Jr.</td>
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<td>38</td>
<td>Garnet L. Pelfrey</td>
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<td>39</td>
<td>Gerald L. Perry and Deloris Perry</td>
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<td>Joyce Porter</td>
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<td>41</td>
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<td>Dencil Reynolds and Judith Reynolds</td>
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<td>43</td>
<td>Roscoe Rhodes and Maxine V. Rhodes</td>
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<td>44</td>
<td>Ronnie Gene Roach</td>
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<td>Danny Lee Rockett and Kathy Newell Rockett</td>
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<td>Franklin D. Rowe</td>
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<td>Charles H. Spradling, Jr.</td>
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<td>Gary Cline Spurgeon</td>
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<td>Harold Ray Stafford</td>
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<td>Posey L. Stevenson</td>
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<td>Stone Company, Inc.</td>
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<td>Paul White and Wanda White</td>
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<td>Rose M. Allen</td>
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<td>Carmet Company</td>
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<td>Frances Jeanette Casey</td>
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<td>Cochran Electric Company</td>
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<td>71</td>
<td>Charles E. Williams</td>
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### Claims against the Department of Motor Vehicles:

**TO BE PAID FROM STATE ROAD FUND**

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<th>Claim Number</th>
<th>Name(s)</th>
<th>Amount</th>
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<td>1</td>
<td>Bank of Gassaway</td>
<td>3,061.16</td>
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</table>
Ch. 47] CLAIMS

(2) Randy Lee Shamblin .................................. 240.00

(p) Claims against the Alcohol Beverage Control Commis-

sioner:

TO BE PAID FROM SPECIAL REVENUE FUND

(1) Nita Kay Colliton .................................. 5,833.49

(2) Handling, Inc. ........................................ 1,031.00

(3) Nellis Motor Sales ................................... 260.97

The Legislature finds that the above moral obligations and
the appropriations 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 con-
sidered by the Legislature in the finding of the moral ob-
ligations and the making of the appropriations for said claim-
ant. The court of claims shall deliver all releases obtained
from claimants to the department against which the claim was
allowed.

CHAPTER 47

(H. B. 794—By Mr. Holmes and Mr. Otto)

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

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of
corrections and the department of motor vehicles to be moral
obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities and
services rendered by certain claimants herein and has considered claims against the state, the department of corrections and the department of motor vehicles, agencies thereof, which have arisen due to overexpenditures of departmental appropriations by officers of such state spending unit, 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 Department of Corrections:**

<table>
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<tr>
<td>Appalachian Regional Hospital</td>
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<td>Morris E. Brown, D.D.S</td>
<td>24.00</td>
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<td>Climate Makers of Charleston, Inc</td>
<td>2,568.00</td>
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<td>Dacar Chemical Co.</td>
<td>110.00</td>
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<td>Davis Memorial Hospital</td>
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<td>Exxon Company, U.S.A</td>
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<td>Gulf Oil Co., U.S.</td>
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<td>George L. Hill, Jr.</td>
<td>600.00</td>
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<td>Huntington Steel &amp; Supply Co.</td>
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<td>Industrial Rubber Products Co.</td>
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<td>Kellogg Company</td>
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<td>The Kroger Co.</td>
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<td>Memorial General Hospital</td>
<td>46,156.75</td>
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<td>Ohio Valley Medical Center, Inc.</td>
<td>11,656.57</td>
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CHAPTER 48

(Com. Sub. for H. B. 1541—By Mr. Holmes and Mr. Otte)

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

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control commissioner; board of regents; department of banking; department of corrections; department of finance and administration; department of health; department of highways; department of motor vehicles; department of public safety; division of vocational rehabilitation; insurance department; nonintoxicating beer commission; office of the state auditor-representation of needy persons fund; state building commission; and the supreme court-mental hygiene fund, to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and
recommendations reported to it by the court of claims concern-

ing various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Alcohol Beverage Control Commissioner:

TO BE PAID FROM SPECIAL REVENUE FUND

(1) Robert H. C. Kay, Trustee, Estate of W. F. Harless $ 225.00

(b) Claims against the Board of Regents:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Carolyn H. Arnold $ 38.00
(2) Charles L. Coffman $ 22.41
(3) Cynthia Donahue $ 348.00
(4) Modern Press, Inc. $ 3,785.77
(5) Patsy Spatafore $ 994.00
(6) Varian Associates—Instrument Division $ 193.78

(c) Claim against the Board of Regents:

TO BE PAID FROM SPECIAL REVENUE FUND—ACCOUNT NUMBER 8710

(1) Wente Construction Company, Inc. $ 70,249.78

(d) Claim against the Department of Banking:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Edward J. Hamilton $ 167.93

(e) Claims against the Department of Corrections:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Fairmont General Hospital $ 265.95
(2) Staunton Foods, Inc. $ 1,842.65
(3) Stewart-Decatur Security Systems, Inc. $ 6,755.70
(f) Claims against the Department of Finance and Administration:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Program Resources, Inc. .................. $ 10,178.50

(2) Weirton Daily Times ....................... $ 34.94

(g) Claims against the Department of Health:

TO BE PAID FROM GENERAL REVENUE FUND

(1) American Scientific Products ............. $ 6,626.00

(2) Appalachian Homes, Inc. .................. $ 1,908.00

(3) Appalachian Power Co. .................... $ 389.55

(4) Associated Radiologists, Inc. ............. $ 6.00

(5) James Earl Campbell ...................... $ 1,500.00

(6) Kenneth Ray Campbell ..................... $ 1,500.00

(7) Melvin S. Campbell ....................... $ 1,500.00

(8) E. I. du Pont de Nemours & Co. .......... $ 6,959.70

(9) J. Robert Evans, d/b/a Motor Car Supply Co. ........................................ $ 60.94

(10) Thelma E. McIntyre, Admin. of the Estate of Wilma S. McIntyre, deceased .......... $ 15,627.30

(11) Sargent-Welch Scientific Co. ............. $ 663.50

(12) John Slone .................................. $ 7,500.00

(13) John Slone, Admin. of the Estate of Maude Slone, deceased ....................... $ 1,155.00

(14) Trojan Steel Company .................... $ 9,200.00

(15) Weslakin Corporation .................... $ 139.80

(h) Claims against the Department of Highways:

TO BE PAID FROM STATE ROAD FUND

(1) Timothy Adkins .............................. $ 2,250.00

(2) Allstate Construction & Roofing Co. ...... $ 2,068.15

(3) Appalachian Power Co. .................... $ 47,473.00

(4) Jeffrey A. Bailey ........................... $ 1,396.87

(5) Mary Jo Bailey ............................. $ 1,690.00

(6) William Frank Ball, d/b/a Ball Trucking, Inc. .................................. $ 948.00

(7) David S. Barnett ........................... $ 209.11

(8) Norman E. Benson ........................... $ 6,000.00
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<th>Amount</th>
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<td>(10) Bracken Construction Company</td>
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<td>(11) Harley C. Butler</td>
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<td>(12) Carl M. Geupel Construction Co., Inc.</td>
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<td>(15) Violet Cook</td>
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<td>(18) Mr. and Mrs. Tamas A. de Kun</td>
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<td>(19) Carol A. Demersman</td>
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<td>(21) Sam Epling</td>
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<td>(31) Marjorie J. Gillispie</td>
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<td>109</td>
<td>(47) Robert W. Mick</td>
<td>$69.49</td>
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Ch. 48] CLAIMS

110  (48) Barbara L. Miller ................................. $ 52.56
111  (49) Carl Moats and Pauline Moats ................ $ 165.00
112  (50) Carl C. Moles .................................. $ 583.74
113  (51) Virgil E. Moore ................................ $ 1,882.50
114  (52) Hughie C. Parks ................................. $ 1,212.50
115  (53) Reba Dixie Perry ............................... $ 2,887.07
116  (54) Zona Ruth Peters ............................... $ 451.00
117  (55) Roy Porterfield and Donna
   F. Porterfield ......................................... $ 38.69
118  (56) Sterling L. Pullen, Jr. ......................... $ 2,148.81
119  (57) Glen L. Ramey .................................. $ 4,933.13
120  (58) Margaret K. Richardson ......................... $ 4,581.05
121  (59) Lee Roy Robertson ............................... $ 1,700.00
122  (60) Arden Leon Stull ............................... $ 2,070.00
123  (61) Gloria Tabit .................................... $ 6,950.00
124  (62) Gary Thompson .................................. $ 286.87
125  (63) Paul J. Underwood and
   Betty O. Underwood ................................. $ 3,777.09
126  (64) Myrtle Chaffins Watts and
   Elbert Watts ........................................ $ 3,722.05
127  (65) West Virginia Telephone Company ............... $ 1,293.33
128  (66) Virginia Williams ............................... $ 647.50
129  (67) Ernest Williamson ............................... $ 119.75
130  (68) Merwin B. Wingo ............................... $ 1,000.00
131  (69) Ernest N. Wolford &
   Patricia K. Wolford ................................ $ 1,861.82
132  (70) Albert Ted Wood ................................. $ 1,743.29
133  (71) David J. Yates ................................ $ 38.85
134  (72) E. H. Young ................................... $ 610.48
135  (73) Robert L. Zimmerman ........................... $ 250.00
136  (74) Dean R. Grim .................................. $ 25,000.00
137  (75) James R. Skinner d/b/a
   Jim’s Grocery ....................................... $ 3,000.00
138  (76) Michael J. Boland ................................ $ 3,500.00
139  (77) J. C. Boland .................................. $ 2,775.00

140  (i) Claims against the Department of Motor Vehicles:

   TO BE PAID FROM STATE ROAD FUND

141  (1) General Motors
   Acceptance Corporation .......................... $ 9,147.03
(2) Malco Plastics, Inc. ........................................... $ 539.58

(j) Claims against the Department of Public Safety:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Appalachian Power Company .......................... $ 272.11
(2) Johnson Controls, Inc. ................................. $ 4,323.67

(k) Claims against the Division of Vocational Rehabilitation:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Beckley Hospital, Inc. ................................. $ 26.95
(2) Davis and Elkins College .............................. $ 787.50
(3) Eye & Ear Clinic of Charleston, Inc. (The) ........ $ 636.00

(l) Claim against the Insurance Department:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Michael J. Davoli ........................................ $ 9,734.00

(m) Claim against the Nonintoxicating Beer Commission:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Cline Distributing Company ........................ $ 3,464.09

(n) Claims against the Office of the State Auditor-Representation of Needy Persons Fund:

TO BE PAID FROM GENERAL REVENUE FUND

(1) James G. Anderson, III .............................. $ 87.50
(2) James Michael Casey ................................ $ 2,148.15
(3) Barry L. Casto ........................................ $ 1,781.02
(4) George M. Cooper ..................................... $ 125.00
(5) James A. Esposito .................................... $ 656.25
(6) L. Edward Friend, II ................................ $ 821.00
(7) Robert F. Gallagher ................................. $ 1,097.00
(8) Nicolette Hahon Granack ......................... $ 787.50
(9) Peggy O'Neal (Hart) ................................. $ 338.96
(10) Jennifer J. Jones ................................... $ 320.00
(11) Carroll T. Lay ......................................... $ 123.75
(12) Stephen C. Littlepage ......................... $ 1,291.60
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181 (13) Elizabeth M. Martin $715.00
182 (14) William W. Merow, Jr. $35.00
183 (15) Damon B. Morgan, Jr. $610.00
184 (16) Raymond G. Musgrave $644.30
185 (17) H. F. Salsbery, Jr. $57.00
186 (18) Michael L. Solomon $1,937.50
187 (19) Francoise D. Stauber $447.00
188 (20) Robert B. Stone $506.25
189 (21) Ward D. Stone, Jr. $150.00
190 (22) Rosemarie Twomey $435.77
191 (23) Charles W. Wilson $94.00
192 (24) Nancy S. Miller $665.00
193 (25) Larry N. Sullivan $252.50

194 (o) Claim against the State Building Commission:

TO BE PAID FROM SPECIAL REVENUE FUND

ACCOUNT NO 9500-09

197 (1) Zando, Martin & Milstead, Inc. $18,833.45

198 (p) Claims against the Supreme Court—Mental Hygiene Fund:

TO BE PAID FROM GENERAL REVENUE FUND

201 (1) Robert N. Bland $400.00
202 (2) Samuel Broverman $211.00
203 (3) George M. Cooper $700.00
204 (4) James A. Esposito $182.50
205 (5) Jeniver J. Jones $25.00
206 (6) James A. Liotta $75.00
207 (7) Jacqui Sites $60.00
208 (8) Stenomask Reporting Service $50.00
209 (9) Eugene R. White $600.00
210 (10) Charles W. Wilson $808.00
211 (11) George Zivkovich $80.00

The Legislature finds that the above moral obligations and the appropriations 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
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents; the department of corrections; the department of finance and administration; and the office of the governor, to be moral obligations of the state and directing payment thereof.

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 occupational therapy, the board of regents, the department of corrections, the department of finance and administration and the office of the governor, agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending unit, 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) Claim against the Board of Regents:

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Johnson Controls, Inc. ............$ 7,780.00</td>
</tr>
</tbody>
</table>

(b) Claims against the Department of Corrections:

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Appalachian Mental Health Center ........$ 4,875.00</td>
</tr>
<tr>
<td>(2) William R. Barton, M.D. ............$ 153.00</td>
</tr>
<tr>
<td>(3) Betsy Ross Bakeries, Inc. ..........$ 687.95</td>
</tr>
<tr>
<td>(4) Capital Credit Corporation ...........$ 313.50</td>
</tr>
<tr>
<td>(5) Grafton City Hospital ...............$ 977.69</td>
</tr>
<tr>
<td>(6) Greenbriar Physicians, Inc. ........$ 104.00</td>
</tr>
<tr>
<td>(7) Interstate Printers &amp; Publishers, Inc.$ 157.30</td>
</tr>
<tr>
<td>(8) I. H. Luna, M.D. .................$ 260.00</td>
</tr>
<tr>
<td>(9) M. Merrick &amp; Associates, Inc. ........$ 108.38</td>
</tr>
<tr>
<td>(10) Memorial General Hospital ............$ 96,328.93</td>
</tr>
<tr>
<td>(11) Robert R. Weiler, M.D. ............$ 1,259.00</td>
</tr>
<tr>
<td>(12) Xerox Corporation .................$ 120.00</td>
</tr>
</tbody>
</table>

(c) Claim against the Department of Finance and Administration:

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) City of Charleston .................$ 31,699.20</td>
</tr>
</tbody>
</table>
AN ACT to amend and reenact sections one, eighteen, nineteen, twenty-four and twenty-six, article one, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto three new sections, designated sections eighteen-a, eighteen-b and eighteen-c, all relating to empowering the state commissioner of finance and administration to collect or cause to be collected certain debts due the state by consigning the collection of said debts to certain debt collection agencies and agents; relating to who may prosecute certain proceedings; providing for a certain compromise, settlement and dismissal of certain claims; relating to the selection and responsibility of certain collection agencies and agents; requiring a certain list; providing for certain fees and a certain fee limitation; and relating to certain compensation to the state auditor's agents and certain reports.

Be it enacted by the Legislature of West Virginia:

That sections one, eighteen, nineteen, twenty-four and twenty-six, article one, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto three new sections, designated sections eighteen-a, eighteen-b and eighteen-c, all to read as follows:

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-1. Who may prosecute debt proceedings.
§14-1-18. Settlement or dismissal of claims.
§14-1-18a. Consignment of claims to debt collector.
§14-1-18b. Regulations applicable to debt collectors.
§14-1-18c. List of eligible debt collectors; statutory limitation applicable to debt collectors.
§14-1-19. Appointment of collection agents by auditor.
§14-1-26. Reports to Legislature.

§14-1-1. Who may prosecute debt proceedings.

1. The auditor, commissioner of finance and administration and any other officer or body authorized by law shall cause appropriate proceedings, in the manner provided for in this article, to be instituted and prosecuted to enforce payment of any debt or liability due the state.

§14-1-18. Settlement or dismissal of claims.

1. The commissioner of finance and administration, auditor or other officer or official body having authority to collect the same may, with the advice of the attorney general, adjust and settle upon just and equitable principles without regard to strict legal rules any account or claim, in favor of the state, which may at the time have been standing upon the books of his or its office more than five years; and, with the like advice, may dismiss any proceedings instituted by him or it.

§14-1-18a. Consignment of claims to debt collector.

1. Any account, claim or debt that an agency of this state is not able to collect within three months after trying with due diligence to do so may be referred to the commissioner of finance and administration for consignment by the commissioner to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. The commissioner shall not handle or consign any such account, claim or debt unless he is satisfied that the
9 referring agency has made a diligent effort to collect the
debt on its own; that the account or claim is justly, prop-
erly and clearly due the state; and that the collection of
any such debt would not impose an undue, unjust, unfair
or unreasonable hardship or burden upon the health or
general welfare of the party owing the debt. In any such
case of undue, unjust, unfair or unreasonable hardship or
burden, the commissioner may, in his discretion, and with the
review and approval of the attorney general, compromise,
settle or dismiss the debt or claim. If he is satisfied that
the aforesaid terms of any conditions for collectibility have
been met, the commissioner may consign the account, claim
or debt to a responsible licensed and bonded debt collection
agency or similar other responsible agent for collection.
In any such case, the collection agency or other agent shall
stand in the place of the state as creditor and shall have
the same claims, rights and remedies against the debtor as
the state has, and the debtor shall have the same rights,
claims, defenses and setoffs against the collection agency or
other agent as he has against the state.

§14-1-18b. Regulations applicable to debt collectors.

1 The commissioner of finance and administration shall
2 promulgate rules and regulations for the determination and
3 regulation of responsible licensed and bonded debt collec-
4 tion agencies and other responsible agents for collection.
5 The commissioner shall determine the collection fees to be
6 paid to any such agency or agent, which fees shall be a per-
7 centage of the amount of the debt recovered, but the com-
8 missioner shall not under any circumstances pay any agency
9 or agent a fee of more than fifty percent of the amount of the
10 debt recovered.

§14-1-18c. List of eligible debt collectors; statutory limitations ap-
pllicable to debt collectors.

1 The state tax commissioner shall establish and maintain
2 a list of debt collection agencies bonded and licensed with
3 the state. When choosing collection agencies under the pro-
4 visions of sections eighteen-a and eighteen-b of this article,
the commissioner of finance and administration shall select and use only those collection agencies on the state tax commissioner's list. In collecting debts under sections eighteen-a and eighteen-b of this article, each debt collection agency and agent shall strictly abide by the provisions of (a) sections one hundred twenty-two through one hundred twenty-nine, inclusive, of article two, chapter forty-six-a of this code; (b) sections one through five, inclusive, of article sixteen, chapter forty-seven of this code; and (c) the federal Fair Debt Collection Practices Act, being Public Law 95-109 of the United States Congress. If any debt collection agency or agent violates any provision of the aforesaid laws, the state tax commissioner shall remove the agency from his aforesaid list and the commissioner of finance and administration shall immediately stop his employment and use of the agency or agent.

§14-1-19. Appointment of collection agents by auditor.

The auditor, subject to the approval of the commissioner of finance and administration, may appoint agents to superintend the collection of those debts to or claims of the state he is by law responsible for. The auditor may authorize them to secure payments thereof by installments or otherwise and give further credit in consideration of additional security or indemnity satisfactory to him.


For the service rendered to the auditor by any agent under the pertinent sections of this article, the auditor shall recommend such compensation as may seem to him reasonable, not exceeding in any case fifty percent of the money actually paid into the treasury. The governor shall authorize the payment of what may be so recommended or so much thereof as in his judgment may be proper.

§14-1-26. Reports to Legislature.

The commissioner of finance and administration and the auditor shall biennially report to the Legislature their proceedings under this article, setting forth particularly all the
AN ACT to amend and reenact section one hundred one, article one, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform controlled substances act and providing for a certain change in language to conform with federal standard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.


1 As used in this act:

2 (a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

3 (1) A practitioner (or, in his presence, by his authorized agent), or

4 (2) The patient or research subject at the direction and in the presence of the practitioner.

5 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
(c) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice," or its successor agency.

(d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of article two.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(f) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(g) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(h) "Dispenser" means a practitioner who dispenses.

(i) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(j) "Distributor" means a person who distributes.

(k) "Drug" means (1) substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary," or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(l) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act
referred to as the state board of pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(m) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) "Marihuana" means all parts of the plant "Cannabis sativa L.,” whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 201, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(q) "Opium poppy" means the plant of the species "Papaver somniferum L.," except its seeds.

(r) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(t) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense,
conduct research with respect to, or to administer a
controlled substance in the course of professional practice or
research in this state.

(u) "Production" includes the manufacture, planting,
cultivation, growing or harvesting of a controlled substance.

(v) "State," when applied to a part of the United States,
includes any state, district, commonwealth, territory, insular
possession thereof, and any area subject to the legal authority
of the United States of America.

(w) "Ultimate user" means a person who lawfully
possesses a controlled substance for his own use or for the
use of a member of his household or for administering to an
animal owned by him or by a member of his household.

CHAPTER 52

(Com. Sub. for H. B 907—By Mr. Speaker, Mr. See)

(Passed March 26, 1981; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred ten and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the schedules of controlled substances; additional substances included.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.
§60A-2-206. Schedule II.
§60A-2-210. Schedule IV.
§60A-2-212. Schedule V.
§60A-2-204. Schedule I.

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

2. (b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

3. (1) Acetylmethadol;

4. (2) Allylprodine;

5. (3) Alphacetylmethadol;

6. (4) Alphameprodine;

7. (5) Alpha methadol;

8. (6) Benzethidine;

9. (7) Betacetylmethadol;

10. (8) Betameprodine;

11. (9) Betamethadol;

12. (10) Betaprodine;

13. (11) Clonitazene;

14. (12) Dextromoramide;

15. (13) Diampromide;

16. (14) Diethylthiambutene;

17. (15) Difenoxin;

18. (16) Dimemoxadol;

19. (17) Dimepheptanol;

20. (18) Dimethylthiambutene;

21. (19) Dioxaphetyl butyrate;

22. (20) Dipipanone;

23. (21) Ethyl methylthiambutene;
29 (22) Etonitazene;
30 (23) Etoxeridine;
31 (24) Furethidinc;
32 (25) Hydroxypethidine;
33 (26) Ketobemidone;
34 (27) Levomoramide;
35 (28) Levophenacylmorphan;
36 (29) Morphoridine;
37 (30) Noracymethadol;
38 (31) Norlevorphanol;
39 (32) Normethadone;
40 (33) Norpipanone;
41 (34) Phenadoxone;
42 (35) Phenampromide;
43 (36) Phenomorphan;
44 (37) Phenoperidine;
45 (38) Piritramide;
46 (39) Proheptazine;
47 (40) Properidine;
48 (41) Propiram;
49 (42) Racemoramide;
50 (43) Sufentanil;
51 (44) Tilidine;
52 (45) Trimeperidine.

(c) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, 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) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCL Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophenine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Phoclodine;
(23) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of the salts, isomers and salts of isomers of any thereof whenever the existence of such salts, isomers and salts of isomers is possible within the
specific chemical designation and for the purposes of this
subsection only, "isomer" includes the optical position and
geometric isomers;

(1) 2,5-dimethoxyamphetamine; also known by these trade
or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-
DMA;

(2) 3,4-methylenedioxy amphetamine;

(3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-
dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;

(4) 5-methyloxy-3, 4-methylenedioxy amphetamine;

(5) 4-methoxyamphetamine; also known by these trade or
other names; 4-methoxy-a-methylphenethylamine; parameth-
 oxyamphetamine; PMA;

(6) 3,4,5-trimethoxy amphetamine;

(7) Bufotenine; known also by these trade and other names;
3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethyla-
mino-ethyl)-5) indolol; N-N-dimethylserotonin; 5-hydroxy-N-
dimethyltryptamine; mappine;

(8) Diethyltryptamine; known also by these trade and other
names; N-N-Diethyltryptamine; "DET”;

(9) Dimethyltryptamine; known also by the name “DMT”;

(10) 4-methyl-2,5-dimethoxy amphetamine; known also by
these trade and other names: 4-methyl-2,5-dimethoxy-a-methyl-
phenethylamine; “DOM”; “STP”;

(11) Iboqaine; known also by these trade and other names:
7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
9-methano-5H-pyrido (1’, 2’: 1, 2 azepino 4,5b) indole; ta-
bernanthe iboga;

(12) Lysergic acid diethylamide;

(13) Marihuana;

(14) Mescaline;

(15) Peyote; meaning all parts of the plant presently
classified botanically as Lophophora Williamsii Lematre,
whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;

(16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocyn;

(20) Tetrahydrocannabinols; including synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

Delta 1

Cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 6

Cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 3, 4

Cis or trans tetrahydrocannabinol tetrahydrocannabinol, and their optical isomers;

(21) Thiophene analog of phencyclidine; also known by these trade or other names: (A) (1-(2-thienyl) cyclohexyl) piperidine; (B) Thienyl analog of phencyclidine; TPCP;

(22) Ethylamine analog of phencyclidine. . . Some trade or other names: N-ethyl-l-phenylcyclohexylamine, (1-phenyl-cyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine . . . Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, ·PCPy, PHP.

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, 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) Mecloqualone.

§60A-2-206. Schedule II.

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

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding nalorphine, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Ethrophine HCL;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
Oxymorphone;

Thebaine;

(2) Any salt, compound, isomer derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

c) Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dextrorphan—excepted;

(5) Dihydrocodeine;

(6) Diphenoxylate;

(7) Fentanyl;

(8) Isomethadone;

(9) Levopropoxyphene—excepted;
(10) Levomethorphan;
(11) Levorphanol;
(12) Metazocine;
(13) Methadone;
(14) Methadone—Intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(15) Moramide—Intermediate,
2-methyl-3-morpholino-l, 1-diphenyl-propane-carboxylic acid;
(16) Pethidine; (meperidine);
(17) Pethidine—Intermediate—A,
4-cyano-1-methyl-4-phenylpiperidine;
(18) Pethidine—Intermediate—B,
ethyl-4-phenylpiperiden-ethyl-4-phenylpiperidin-4-carboxylate;
(19) Pethidine—Intermediate—C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;
(20) Phenazocine;
(21) Piminodine;
(22) Racemethorphan;
(23) Racemorphan;
(24) Bulk Dextropropoxyphene (non dosage forms).

(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;

(1) Methamphetamine, including its salts, isomers and salts of isomers;
(2) Amphetamine, its salts, optical isomers and salts of its optical isomers;
(3) Phenmetrazine and its salts;
(4) Methylphenidate and its salts.
(e) 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 depressant effect on the central nervous system, 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. Methaqualone;
2. Amobarbital;
3. Secobarbital;
4. Pentobarbital;
5. Phencyclidine.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine;
2. Phenylacetone
   Some trade or other names: phenyl-2-propanone; P2P; benzylmethyl ketone; methyl benzyl ketone.
3. Immediate precursors to phencyclidine (PCP):
   i. 1-phenylcyclohexylamine
   ii. 1-piperidinocyclohexanecarbonitrile (PCC).

§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:
200 CONTRO LLED SUBSTANCES

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

(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 hav-
ing a stimulant effect on the central nervous system, 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 within the specific chemical designation:

1. Diethylpropion;
2. Phentermine;
3. Pemoline (including organometallic complexes and chelates thereof);
4. Pipradrol;
5. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

(e) Other substances. 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:

1. Dextropropoxyphene (alpha - (+) - 4 - dimethylamino-1, 2 - diphenyl - 3 - methyl - 2 - propionoxybutane).

(f) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

§60A-2-212. Schedule V.

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

2. (b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams and not more than 10 milligrams per dosage unit;
(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;
(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;
(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
(c) Loperamide.
(d) Amyl Nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription, or for industrial or manufacturing purposes.

CHAPTER 53

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

AN ACT to amend and reenact section one, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated section one-a, all relating to the West Virginia industrial home for girls; changing the name of the industrial home; and allowing boys to be transferred from the West Virginia industrial school for boys to the West Virginia industrial home for youth.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-1. Continuation; management.
§28-3-1a. Transfer of boys from West Virginia industrial school for boys.

§28-3-1. Continuation; management.

1 The West Virginia industrial home for girls, heretofore established and located at Industrial, in Harrison County, shall be continued and hereafter known as the “West Virginia Industrial home for youth.” The industrial home shall be charged with the care, training and reformation of girls and boys committed to its custody. It shall be managed, directed and controlled as prescribed in article one, chapter twenty-five of this code.

§28-3-1a. Transfer of boys from West Virginia industrial school for boys.

1 Boys, fourteen years of age and younger, may be transferred from the West Virginia industrial school for boys to the West Virginia industrial home for youth in accordance with section sixteen, article one, chapter twenty-five of this code: Provided, That nothing in the foregoing shall prevent the temporary transfer of any male youth for a period not to exceed thirty days for the purpose of testing, evaluation or diagnosis.

CHAPTER 54
(S. B. 427—By Mrs. Spears and Mr. McCune)

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

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-k, relating to county commissions; and authorizing the use of county-owned property by nonprofit organizations.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3k. Authority to lease, rent or permit the use of county property.

The county commission of each county is authorized to lease, rent or to permit the use of county-owned buildings, lands and other properties or any portion thereof by nonprofit organizations. Authorized uses pursuant to this section shall include the granting of meeting places, service outlets and operational headquarters for organizations established within the county.

Each county commission is authorized to charge and collect fees for uses of county properties pursuant to this section. In addition, each county commission is empowered to promulgate rules and regulations in order to carry out the provisions of this section within the county.

The allocation of county properties for use by organizations shall be controlled either by the county commission or, optionally, by a panel which may be appointed by the commission for this purpose. Any panel appointed pursuant to this section shall consist of not less than three nor more than five members who shall serve at the will and pleasure of the commission. All decisions of a panel, if one is appointed, shall be subject to review by the county commission.

If a panel is appointed pursuant to this section, each member shall be a resident of the county in which the panel sits. A majority of the panel shall constitute a quorum for the transaction of business, and all matters shall be decided by the majority vote of those members present at a meeting. Each panel is authorized to select from among its members one secretary, who shall keep a record of all proceedings, and one chairman. A member may be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of his duties.
AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be adding thereto a new section, designated section nineteen, relating to liability insurance for county officers and employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-19. Liability insurance for county officers and employees.

1. Every county shall have plenary power and authority to contract and expend public funds for the purchase of one or more policies of public liability insurance, with or without a sharing in the cost thereof by the officers, agents and employees of such county, providing the county and its officers, agents and employees insurance coverage for legal liability of said county and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonments) and property damage, and affording said county and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said county, or its officers, agents or employees in the performance of their official duties.

2. So long as the coverage aforesaid is obtained and remains in full force and effect as to the law-enforcement officers of a county, the bond specified in section five, article seven, chapter sixty-one of this code shall not be required as to such police officers.
AN ACT to amend and reenact section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removal, discharge, suspension or reduction in rank or pay of a deputy sheriff; reduction in number of deputies; age requirements; payment of attorney fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; reduction in force; mandatory retirement age.

1 (a) On and after the effective date of this article, no deputy sheriff of any county subject to the provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as provided in section fifteen of this article; and no such deputy shall on and after the effective date of this article, be removed, discharged, suspended or reduced except as provided in this article and in no event until he shall have been furnished with a written statement of the reasons for such action.

1 In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the deputy sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the deputy
sought to be removed, discharged, suspended or reduced shall demand it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing sheriff, hereinafter in this section referred to as "removing sheriff," to justify his action, and in the event the removing sheriff fails to justify his action before the commission, then the deputy removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. The deputy if reinstated or exonerated, shall, if represented by legal counsel, be awarded an attorney fee of no more than two hundred fifty dollars and such fee shall be determined by the commission and paid by the removing sheriff from county funds. A written record of all testimony taken at such hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the civil service commission shall sustain the action of the removing sheriff, the deputy removed, discharged, suspended or reduced on or after the effective date of this article, shall have an immediate right of appeal to the circuit court of the county. In the event that the commission shall reinstate the deputy removed, discharged, suspended or reduced, the removing sheriff shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the deputy or removing sheriff, as the case may be, against whom the decision of the circuit court is rendered
shall have the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. Such deputy or removing sheriff shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus. The deputy, if reinstated or exonerated by the circuit court shall, if represented by legal counsel, be awarded an attorney fee not to exceed five hundred dollars, and if reinstated or exonerated by the supreme court of appeals, shall be awarded an attorney fee not to exceed five hundred dollars, and such fees shall be paid by the removing sheriff from county funds: Provided, That the aggregate amount of attorney fees awarded by the commission, the circuit court and the supreme court of appeals, shall not exceed one thousand dollars for any member litigant.

(c) The removing sheriff and the deputy sought to be removed, discharged, suspended or reduced shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall, on and after the effective date of this article, be deemed necessary by any appointing sheriff to reduce the number of his deputies, he shall follow the procedure set forth in this subsection (d). The reduction in the numbers of the deputy sheriffs of the county shall be effected by suspending the last man or men, including probationers, who have been appointed as deputies. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the number of deputies shall again be increased in numbers to the strength existing prior to such reduction of deputies, the deputies suspended under the terms of this subsection (d) shall be reinstated in the inverse order of their suspension before any new appointments of deputy sheriffs in the county shall be made.

(e) Notwithstanding any other provision of this article, no deputy sheriff in any county subject to the provisions of this article shall, on or after the effective date of this article, serve as a deputy sheriff in any county subject to the provisions of this article after he attains the age of sixty-five.
AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-b, relating to providing for sick leave for deputy sheriffs; accumulation thereof; emergency sick leave.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17b. Sick leave.

(a) The county commission of each county shall allow the sheriff's deputies sick leave with pay to be computed as follows:

Full-time deputies shall be entitled to one and one-half days sick leave for each calendar month worked, or greater part thereof; part-time deputies shall be entitled to sick leave at the same rate and in the same proportion that hours actually worked bears to hours regularly scheduled for full-time deputies.

(b) Sick leave shall be granted only when illness on the part of or injury to the deputy incapacitates him for duty: Provided, That the sheriff of the county in which the deputy is employed shall have the authority to require the deputy to produce a statement from an attending physician for each day of sick leave beyond two days. This statement shall include dates of treatment and also state that the deputy was unable to work. In the absence of the required physician's statement, annual leave shall be charged for the entire period.

(c) Deputies with fifteen or more years of service may accumulate not more than ninety sick leave days. Deputies
with more than ten but less than fifteen years of service may accumulate not more than eighty sick leave days. Deputies with more than five but less than ten years of service may accumulate not more than seventy sick leave days. Deputies with not more than five years' service may accumulate not more than sixty sick leave days. The accumulation of sick leave pursuant to this subsection shall begin as of the effective date of this section.

(d) In the event of illness, a full-time deputy may take emergency sick leave without pay after all accrued sick leave, annual leave and compensatory time available to such full-time deputy has been exhausted: Provided, That the total number of days of sick leave and emergency sick leave used during such illness shall not exceed the total number of days of sick leave which may be accumulated under the provisions of subsection (c) of this section by any full-time deputy with the same number of years of service.

CHAPTER 58

(H. B. 986—By Mrs. Blatnik)

[Passed April 2, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the fees to be charged by the clerk of the county commission for recordings and other services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

For the purpose of this section, the word "page" is defined
as being a paper writing of not more than legal size, 8½" x 13".

The clerk of the county commission shall charge and collect the following fees:

When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and indexing in a proper index, where the writing is a deed of conveyance, trust deed, lease, or power of attorney concerning real estate $2.00

If such writing contains more than two pages, for each additional page, in counties where recording is done by photograph, fifty cents; and in counties where recording is done by typewriter, and such writing contains more than one thousand words, three cents for each additional twenty words.

For recording a plat accompanying a deed or other writing .......................... 2.00

If such plat contains more than one hundred twenty square inches, for each additional square inch ........ .010

For recording and indexing a map to be placed in map book ...................................... 3.00

If such map contains more than one hundred twenty square inches, for each additional square inch .......... .010

For recording and indexing assignment .................. 2.00

If such assignment contains more than one reference to the record of property assigned, for each reference ................................................................. 1.00

If such assignment does not give the reference to the record of property assigned, for search of record to determine such book and page ....................... .50

If such assignment contains more than two pages, for each additional page ............................... 1.00

For recording and indexing and noting release of lien ........................................... 2.00
If such release contains more than one reference to
lien released, for each lien released thereby ______________ 2.00

If book and page reference to lien released is
omitted, for search of record to determine such book
and page _________________________________________________ .50

For filing or refiling and entering conditional sales
contract ___________________________________________________ 2.00

For recording and indexing a satisfaction of a condi-
tional sales contract ________________________________________ 2.00

For filing each financing, continuation or termination
statement or other statement or writing permitted to
be filed under chapter forty-six of the code ________________ 2.00

For filing, preserving and indexing a security agree-
ment filed under chapter forty-six of the code ______________ 3.00

For recording and indexing a certificate of
incorporation _______________________________________________ 2.00

If such certificate contains more than two pages, for
each additional page _________________________________________ 1.00

For filing and indexing a certificate showing the
name or names of a person or persons conducting
business under an assumed name ______________________________ 2.00

For certifying to the assessor a transfer of real estate
under section eight, article four, chapter eleven of the
code _________________________________________________________ 1.00

For swearing the witnesses and entering in the order
or minute book, all orders in relation to the proof of a
will which is admitted to record without contest, and
copying such order on the will or on a paper annexed
thereto, when fully proved and but one order _____________ 3.00

If the will be but partially proved on one day, for the
order and entering the same on the will or paper an-
nexed thereto ______________________________________________ 1.00

For each subsequent order and entering the same on
the will or paper annexed thereto __________________________________________ 1.00
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>For the same services where there is a contest</td>
<td>8.00</td>
</tr>
<tr>
<td>72</td>
<td>For preparing notices in connection with contest, or any hearing, each notice</td>
<td>1.00</td>
</tr>
<tr>
<td>73</td>
<td>For recording a will and the matter recorded there-with in the will book</td>
<td>2.00</td>
</tr>
<tr>
<td>74</td>
<td>If will and matter recorded therewith contains more than two pages, for each additional page</td>
<td>1.00</td>
</tr>
<tr>
<td>75</td>
<td>For entering orders and transmitting papers in case of appeal</td>
<td>3.00</td>
</tr>
<tr>
<td>76</td>
<td>If such order and transmittal contains more than five pages, for each additional page</td>
<td>1.00</td>
</tr>
<tr>
<td>77</td>
<td>If any personal representative or guardian qualify for administering necessary oaths, notating the bond, entering and copying on the will, order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisement</td>
<td>2.00</td>
</tr>
<tr>
<td>78</td>
<td>For each additional copy of qualification order</td>
<td>1.00</td>
</tr>
<tr>
<td>79</td>
<td>If several personal representatives qualify on the same estate at the same time or term the same fee shall be charged as if one had qualified, to wit</td>
<td>2.00</td>
</tr>
<tr>
<td>80</td>
<td>For entering and copying an order granting a license under provisions of article twelve, chapter eleven of the code</td>
<td>1.00</td>
</tr>
<tr>
<td>81</td>
<td>For certificate for a license or endorsing assignment thereof</td>
<td>1.00</td>
</tr>
<tr>
<td>82</td>
<td>For issuance of marriage license, for preparing the application and administering the oath, for registering and recording the license, for mailing acknowledgment of minister’s return to one of licensees, for notifying one of licensees after sixty days of the non-receipt of the minister’s return</td>
<td>8.00</td>
</tr>
<tr>
<td>83</td>
<td>One dollar of the latter fee shall be paid by the county clerk into the state treasury as a state registra-</td>
<td></td>
</tr>
</tbody>
</table>
tion fee, in the same manner that license taxes are paid
into the treasury under article twelve, chapter eleven
of the code.

For search of anything in his office of over a year’s
standing, unless otherwise required by statute ............ .50

For recording certificates and posting a copy there-
of under the provisions of section two, article one,
chapter thirty-four of the code ------------------------ 1.50

For docketing or redocketing under article three,
chapter thirty-eight of the code, a judgment, decree,
bond or recognizance ---------------------------------- 1.00

If such writing contains more than one page, for
each additional page ---------------------------------- 1.00

For recording and indexing an execution and noting
the date of issuance and the date of filing of same
upon the judgment record ----------------------------- 1.50

For making out a transcript of the record and pro-
ceedings in any case in due form so that the
same may be used in appellate court, such fee shall
be the same as specified herein for recording.

For making out, in any other manner than copying,
any paper to go out of the office which is not other-
wise provided for ---------------------------------- 1.50

If such paper contains more than two pages, for
each additional page ...................................... 1.00

For any copy, if it be not otherwise provided for ........ 1.50

If such copy contains more than two pages, for each
additional page ......................................... 1.00

For annexing the seal of the court to any paper,
writing certificates of clerk accompanying it ........... 1.00

For writing a certificate of the president of the court
or judge, when the clerk be required to do so .......... 1.00

For recording and indexing an inventory or sale bill 1.50
If such writing contains more than two pages, for each additional page 1.00
For entering an order confirming the report of a fiduciary 1.00
For recording and indexing such report and matter recorded therewith 3.00
If such report contains more than four pages, for each additional page 1.00
For recording and indexing any bond required by law to be recorded, including the certificate or other evidence of its execution 1.50
If such bond and certificate contains more than two pages, for each additional page 1.00
For recording and indexing a notice of mechanic's lien 1.50
If such notice contains more than two pages, for each additional page 1.00
For recording contract limiting liability of owner and bond of contractor to be filed therewith, as prescribed in article two, chapter thirty-eight of the code 2.00
If such contract and bond contains more than two pages, for each additional page 1.00
For recording and indexing a notice of lis pendens 1.50
If such notice contains more than two pages, for each additional page 1.00
For recording a certificate of real estate claimed as a homestead 1.00
For administering an oath not herein provided for, and writing a certificate thereof where the case requires one 1.00
For recording a writing containing pages in excess
AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transcripts of court reporters' notes; cost per page of transcripts and copies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

The reporter shall furnish, upon request, to any party to a case, a typewritten transcript of his shorthand notes of the testimony or other proceedings, which shall be upon paper measuring eight and one-half inches in width and
A transcript of such testimony or proceedings, when certified by the official reporter and by the judge of the court, shall be authentic for all purposes, and shall be used by the parties to the cause in any further proceeding therein wherein the use of the same may be required. It may be used, without further authentication, in making up the record on appeal, as provided in sections thirty-six and thirty-seven, article six, chapter fifty-six of this code; and in all cases of appeal such reporter shall also make a carbon copy of such transcript, which copy shall be filed in the office of the clerk of the court in which the trial or proceedings were had, to be used, if necessary, in making up the record on appeal, and, if so used, the clerk shall not be entitled to any fee for that part of the record. If, upon appeal or writ of error, the judgment, decree or order entered in the cause be reversed, the cost of such transcript shall be taxed as other costs; and if such transcript be requested or required for the purpose of demurring to the evidence, the cost thereof shall be taxed in favor of the party prevailing on the demurrer.

It shall also be the duty of such reporter in any criminal case, upon the request of the court or the judge thereof, and for his use, to furnish a transcript of his notes of the testimony and proceedings without extra charge.
CHAPTER 60

(H. B. 1093—By Mr. Burdette)

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

AN ACT to amend and reenact sections ten, seventeen, nineteen, twenty and twenty-seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article ten by adding thereto a new section, designated section fifteen-a, all relating to credit unions; the approval of loans by the credit committee or a loan officer; the form for loan applications; appeal from a decision of the credit committee; appointment of loan officers; record of loan applications; prohibition on disbursement by a loan officer; line of credit accounts; review of line of credit accounts; default and termination of line of credit accounts; requirement for share and deposit insurance; exception; sanctions for failure to obtain insurance; extensions of time to obtain insurance; commitment for insurance a condition precedent for grant of new charter; availability of reports; appointment of liquidating agent; power to rediscount and borrow; limitations on amount of rediscounts and borrowings; security for loans to members; installment crop loans; loan to members of a credit committee; illegal loan to a nonmember; repayment of loans; reserve income; proportion of profits placed in reserve fund; conversion of state chartered credit union into federal credit union; notice, voting and approval by credit union members of the proposition for conversion; verification and filing of voting results; application for status as a federal credit union; cessation of applicability of this article; effect of conversion on assets and obligations; and providing for the conversion of a federal credit union or a credit union of another state to a credit union incorporated under the laws of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-10. Loan applications and approval; appeals; lines of credit.

§31-10-15a. Share and deposit insurance.

§31-10-17. Rediscounts and borrowings.

§31-10-19. Security for loans; installment crop loans; loan to member of credit committee; loans to nonmembers prohibited; repayment.

§31-10-20. Fees, charges and proportion of profits placed in reserve fund; use of fund.

§31-10-27. Conversion of charter.

§31-10-10. Loan applications and approval; appeals; lines of credit.

1 (a) The credit committee or its appointed loan officer shall approve every loan or line of credit made by the corporation to members. Every application for a loan shall be made in writing on a form prepared by the board of directors and shall state the purpose for which the loan is desired and any security offered. Except as provided in subsec- tion (b) of this section, no loan shall be made if it has not received the approval of the entire number of such committee present when it was considered, which number shall be at least a majority of the members of such committee, nor if any member of such committee shall disapprove thereof, but the applicant for a loan may appeal from the decision of the credit committee to the board of directors. The credit com- mittee shall meet as often as may be required, after due notice has been given to each member.

16 (b) The credit committee may appoint one or more loan officers and delegate to him or them the power to approve
loans and lines of credit within amounts and under conditions established by the credit committee. A member whose application has been disapproved by a loan officer may appeal such action to the credit committee. Each loan officer shall furnish to the credit committee a record of each application approved or not approved by him within seven days of the date of filing of the application therefor. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as loan officer: Provided, That the loan officer may disburse funds approved by him which are fully secured by shares or which do not exceed the credit union's unsecured loan limit.

(c) With the written approval of the commissioner of banking, and within lending limits established by the commissioner, a credit union may make line of credit loans in accordance with the provisions of section one hundred six, article three, chapter forty-six-a. The credit committee or the loan officer may approve a member's application for a self-replenishing line of credit, and loan advances may be granted to the member within the limit of such line of credit. Each such line of credit shall be reviewed not less than annually by the credit committee and approved or disapproved as to the grant of further loan advances. Any line of credit with respect to which the member is in default by virtue of being ninety days delinquent in payment shall automatically terminate: Provided, That such termination shall not affect the rights, liabilities and obligations of the credit union and the defaulting member with respect to loans made prior to the effective date of termination or any collateral securing such loans.

§31-10-15a. Share and deposit insurance.

(a) All credit unions established pursuant to this chapter shall qualify for and obtain insurance on shares and deposits as provided by the National Credit Union Administration under Title II of the Federal Credit Union Act, or alternatively, a
form of comparable insurance approved by the commissioner of banking.

(b) Each credit union which fails to obtain insurance as required herein by the first day of January, one thousand nine hundred eighty-two, shall be prohibited from conducting business as a credit union until such insurance is obtained. A credit union which has been denied a commitment for such insurance shall within thirty days commence steps to either liquidate, or merge with an insured credit union, or apply in writing to the commissioner of banking for additional time to obtain an insurance commitment. The commissioner of banking shall grant one or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment.

(c) No credit union shall be granted a charter by the commissioner of banking unless such credit union has obtained a commitment for insurance of its members' share and deposit accounts.

(d) The commissioner of banking may make available reports of condition and examination findings to the National Credit Union Administration or to any qualified insuring organization and may accept any report of examination made on behalf of such agency or organization. The commissioner of banking may appoint an official of the National Credit Union Administration or of any qualified insuring organization as liquidating agent of an insured credit union.

§31-10-17. Rediscouts and borrowings.

If the bylaws so provide, a credit union shall have the power to rediscout, as hereinafter provided, or to borrow money from any source, in addition to receiving deposits, as indicated in section fifteen. Unless otherwise authorized in writing by the commissioner of banking, the aggregate amount of such rediscouts and borrowings shall at no time exceed twenty percent of the sum total of the capital, surplus and reserve funds of such borrowing credit union, and in no event
§31-10-19. Security for loans; installment crop loans; loan to member of credit committee; loans to nonmembers prohibited; repayment.

As provided in section eighteen of this article, a credit union may loan to its members for such purposes and upon such security and terms as the bylaws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of two thousand five hundred dollars: Provided, That upon written approval of the commissioner of banking, credit unions having assets of more than one million dollars may be authorized to make unsecured loans in excess of two thousand five hundred dollars but not in excess of five thousand dollars each. Endorsements of a note or assignment of shares in any credit union shall be deemed security within the meaning of this section.

A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

If any member of the credit committee makes application to borrow money from a credit union or becomes surety for any other member whose application for a loan is under consideration, the supervisory committee shall appoint a substitute to act on the credit committee in the place of such member, during the consideration of such application. All officers and members of any committee in any way knowingly permitting or participating in making a loan of funds of a credit union to a nonmember thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of any such illegal loan from the borrower or from any officer or member of a committee who knowingly committed or participated in the making thereof, or from all of them jointly.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.
§31-10-20. Fees, charges and proportion of profits placed in reserve fund; use of fund.

All entrance fees, transfer fees and charges shall, after the payment of organization expenses, be known as reserve income and shall be added to the reserve fund of the corporation. In addition to such reserves as the commissioner of banking may from time to time require a credit union to maintain, each credit union shall set aside at the first closing of its books, a reserve fund equal to the amount of all membership fees collected that year plus three percent of the principal on outstanding loans to members and notes purchased from another credit union. Each subsequent year, upon the closing of the books, fifteen percent of the net earnings shall be added to the reserve fund until it equals five percent of outstanding loans and notes. Then ten percent of the net earnings shall be added until the fund equals seven percent of such loans and notes. If the reserve fund becomes less than seven percent of such loans and notes, then the schedule of allocation to the reserve fund shall apply until the seven percent ratio is again established.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members, except upon dissolution of the corporation.

§31-10-27. Conversion of charter.

A credit union chartered under state law may be converted into a federal credit union under the laws of this state by complying with the following requirements:

(a) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members, (either at a meeting to be held on such date or by written ballot to be filed on or before such date), by a majority of the directors of the said credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty or less than seven days prior to such date. Approval of the proposition for con-
version shall be by the affirmative vote of two thirds of the members, in person or in writing.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the commissioner of banking within ten days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal law to make it a federal credit union, and within ten days after receipt of the federal credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing, the credit union shall cease to be a credit union governed by state law.

(d) Upon ceasing to be a credit union chartered under state law, such credit union shall no longer be subject to any of the provisions of this article. The successor federal credit union shall be vested with all the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(e) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and all requirements of the law of this state: Provided, That the commissioner of banking shall adopt such rules and regulations as he deems necessary and proper, establishing the procedure for converting such a credit union to a credit union incorporated under the laws of this state. Proof shall be filed by the credit union with the commissioner of banking as to compliance with the requirements of the jurisdiction under which it was originally organized and the requirements of said commissioner.
AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to providing a system for the payment of reparations to victims of crimes; providing a short title for said article; the legislative purposes and intent with respect thereto; definitions of certain terms used with respect to said article; creating a crime victims reparation fund within the state; providing for the payment of additional costs in criminal cases to be paid into said fund and providing that said fund shall not be regarded as general revenues of the state; extending the jurisdiction of the court of claims to cases arising pursuant to said article; procedures for the appointment of commissioners by the court of claims for the purpose of hearing certain cases; the qualifications of said commissioners and their oath of office; requiring the attorney general to represent the interests of the state in such cases; providing for the filing of application for awards pursuant to said article; the contents of such application; requiring filing fees to be paid by the said applicant; the procedures for the filing of such applications; limitation of action; criminal penalties for filing false or fraudulent applications; procedures applicable to indigent applicants; providing that a copy of said application be furnished the attorney general; requiring certain investigation and recommendations to be made by the attorney general and for the time of filing certain findings of fact and recommendations by the attorney general; the assignment of claims made pursuant to said article to a judge or commissioner and procedures relating thereto; the approval of said claim by such judge or commissioner; the grounds for the denial or reduction of claims or awards made pursuant to said article and certain procedures with respect thereto; hearings to be held pursuant to said article and the procedures for such hearings; restricting certain privileges as to the communications and records applicable to claimants making application pursuant to said article; limiting the
contempt powers of the court of claims in certain instances; relating to the effect of the failure of prosecution or conviction of criminal offenders with respect to awards made pursuant to this article; providing for certain attorney and witness fees with respect to claims made pursuant to said article; the procedures for the certification and payment of claims made pursuant to said article; requiring annual reports of the activities of the court of claims with respect to said article; extending certain subrogation rights to the state with respect to payments made pursuant to said article; limiting the subrogation rights of persons making collateral payments to claimants; providing that payments and awards made pursuant to said article shall be exempt from execution or attachments and providing for certain exceptions with respect thereto; requiring the preparation and dissemination of information informing the public of the rights of claimants to the provisions of this article and the duty of law-enforcement agencies with respect thereto; empowering the court of claims to promulgate rules and regulations for the implementation of the provisions of said article; limiting the application of said article; and providing for an expiration date of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-10. Filing of application for reparation award; filing fee; contents.
§14-2A-12. Investigation and recommendations by attorney general.

§14-2A-13. Notice to claimant of attorney general's recommendation; evaluation of claim by judge or commissioner.

§14-2A-14. Grounds for denial of claim or reduction of award.


§14-2A-17. Contempt sanction not available.

§14-2A-18. Effect of prosecution or conviction of offender.


§14-2A-24. Award not subject to execution or attachment; exceptions.


1 This article shall be known and cited as the “West Virginia Crime Reparation Act of 1981.”


1 The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. Despite this history, the government of this state has not fully met the expectations of its citizens to be free of the devastating effects of criminal conduct by a small percentage of their fellow citizens; therefore, the Legislature desires to develop and perfect a system of reparations for the victims of crime to partially address the fact that the present and existing
tools of crime prevention and correction are not wholly effective. This act of the Legislature is designed as an experimental effort of the Legislature of this state on behalf of its people, to provide a partial remedy for the failure of the state to fully achieve the primary purpose of government herein described. The demonstration project envisioned by this article is constructed to provide a system of reparations which is within the resources of our society. Being experimental, this project should be fully within the control of the Legislature as the repository of the powers of the people and be subject to review and perfection by the Legislature during its initial experimental stages. The system herein provided should be fully reviewed in a reasonable time and, if successful, made a permanent part of the system of government. Pending the full development of a more complete system of reparations the system should be retained in the legislative branch as an expression of a moral obligation of the state, deferring to a later date consideration of the question of whether such remedy should be defined as an enforceable legal right of each of the citizens of this state and the citizens of other states entitled to the same privileges and immunities of our citizens. Pending such full development, no privilege herein granted shall be deemed to be a vested right of any citizen, but this article shall rather be a means of defining and presenting, for legislative consideration, the nature and extent of the moral obligation of this state and its ability to afford reparations to its lawabiding citizens who suffer from the effect of violent criminal conduct.


1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons who claim an award of reparations under this article:

3 (1) A victim;

4 (2) A dependent of a deceased victim;

5 (3) A third person other than a collateral source;

6 (4) A person who is authorized to act on behalf of a victim, a dependent, or a third person who is not a collateral source.
“Collateral source” means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

1. The offender;
2. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;
3. Social security, medicare, and medicaid;
4. State-required, temporary, nonoccupational disability insurance;
5. Workmen’s compensation;
6. Wage continuation programs of any employer;
7. Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;
8. A contract providing prepaid hospital and other health care services, or benefits for disability.

“Criminally injurious conduct” means conduct that occurs or is attempted in this state which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct is shown under this article to have committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

“Dependent” means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after his death.

“Economic loss” means economic detriment consisting
only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss, however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of five hundred dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.
(j) "Dependent's replacement service loss" means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(l) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct.


Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, shall pay the sum of three dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The clerk of the circuit court, magistrate court, or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "crime victims reparation fund," which is hereby created. All moneys collected and received under this article and paid into the state treasury and credited to the "crime victims reparation fund" in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for appropriation by the Legislature for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the state.


Any judge of the court of claims individually, or the court of claims en banc, or any court of claims commissioner appointed pursuant to section six of this article, shall have jurisdiction
to approve awards of reparations for economic loss arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.


(a) The court of claims, with the approval of the president of the Senate and the speaker of the House of Delegates, shall appoint at least three court of claims commissioners to hear claims for an award of reparations and to approve awards of reparations pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims.

(b) The court of claims shall fix the compensation of the court of claims commissioners in an amount not exceeding the compensation for judges of the court of claims. Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as judges and commissioners under this article shall be paid out of the crime victims reparation fund.


Each commissioner appointed by the court of claims shall be an attorney-at-law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than three years prior to his appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his capacity as commissioner of the court. A commissioner shall not hear or participate in the consideration of any claim in which he is interested personally, either directly or indirectly. When practicable, the commissioners should be selected from different congressional districts and be geographically located, with reference to their counties of residence, to facilitate the appearance of claimants and witnesses at hearings held pursuant to this article.

Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by section five, article four of the constitution of the state. The oath shall be filed with the clerk.


The attorney general shall represent the interests of the state in all claims coming before the court of claims or a commissioner.

§14-2A-10. Filing of application for reparation award; filing fee; contents.

(a) A claim for an award of reparations shall be commenced by filing an application for an award of reparations with the clerk of the court of claims. Each application shall be accompanied by a filing fee of ten dollars unless waived pursuant to subsection (b), section eleven of this article. The application shall be in a form prescribed by the clerk of the court of claims, and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;

(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(4) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which reparations are sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where
the victim received medical treatment for the injuries, and
whether the victim died as a result of the injuries;

(6) The total amount of the economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;

(7) The amount of benefits or advantages that the victim, a dependent, or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(8) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(9) A release authorizing the court of claims, the court of claims commissioners, and the staff of the attorney general to obtain any report, document or information that relates to the determination of the claim for an award of reparations;

(10) Any additional relevant information that the court of claims may require. The court of claims may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of reparations shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of such court. If the
61 convicted person is a state officer or employee, he shall, in
62 addition, forfeit his office or position of employment, as
63 the case may be.


(a) The clerk of the court of claims shall establish a pro-
cedure for the filing, recording and processing of applications
for an award of reparations.

(b) If an applicant files an affidavit stating that he is an
indigent person and that payment of the filing fee would create
a financial hardship for him, the clerk, pursuant to rules es-

tablished by the court of claims, may accept the application for
filing without payment of the filing fee. If the application is
accepted without payment of the filing fee and an award is
made pursuant to the application, the amount of the award
shall be reduced by the amount of the filing fee.

§14-2A-12. Investigation and recommendations by attorney general.

(a) The clerk of the court of claims shall send a copy of the
application to the attorney general within seven days after the
filing of the application.

(b) The attorney general, upon receipt of an application for
an award of reparations from the clerk of the court of claims,
shall investigate the claim. After completing the investigation,
the attorney general shall make a written finding of fact and
recommendation concerning an award of reparations. He shall
file with the clerk the finding of fact and recommendation and
all information or documents that he used in his investigation.

(c) The attorney general while investigating the claim, may
require the claimant to supplement the application for an award
of reparations with any further information or documentary
materials, including any medical report readily available,
which may lead to any relevant facts aiding in the determina-
tion of whether, and the extent to which, a claimant qualifies
for an award of reparations. The attorney general may depose
any witness, including the claimant, in the same manner as
witnesses are deposed under the rules of civil procedure for trial courts of record.

(d) The finding of fact that is issued by the attorney general pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred, and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or, the reasons why the conduct was not reported to a law-enforcement officer or agency; or, the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) A specific itemization of the economic loss that was sustained by the victim, the claimant, or a dependent as a result of the criminally injurious conduct;

(5) A specific itemization of any benefits or advantages that the victim, the claimant, or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any additional information that the attorney general deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the attorney general pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of reparations should be made to the claimant and the amount of the award.
(2) If the attorney general recommends that an award not be made to the claimant, the reason for his decision.

(f) The attorney general shall file his finding of fact and recommendation with the clerk within sixty days after the filing of the application, or within such additional time period as may be provided by order of any court of claims judge or commissioner upon good cause shown, but in no event later than six months after such filing.

§14-2A-13. Notice to claimant of attorney general’s recommendation; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the attorney general’s finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a judge or commissioner of the court.

(b) The judge or commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the attorney general to comment in writing on the claimant’s response. The judge or commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of reparations to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award.

(a) The judge or commissioner shall not approve an award of reparations to a claimant who did not file his application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of reparations.

(b) An award of reparations shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless
it is determined that good cause existed for the failure to re-
port the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award
of reparations to a claimant who is the offender or an accom-
plice of the offender who committed the criminally injurious
conduct, nor to any claimant if the award would unjustly bene-
fit the offender or his accomplice. Unless a determination is
made that the interests of justice require that an award be
approved in a particular case, an award of reparations shall
not be made to the spouse of, or to a person living in the same
household with, the offender or accomplice of the offender, or
to the parent, child, brother or sister of the offender or his
accomplice.

(d) A judge or commissioner, upon a finding that the claim-
ant or victim has not fully cooperated with appropriate law-
forcement agencies, may deny a claim, reduce an award of
reparations, and may reconsider a claim already approved.

(e) An award of reparations shall not be approved if the
injury occurred while the victim was confined in any state,
county or city jail, prison or correctional facility.

(f) After reaching a decision to approve an award of re-
paration, but prior to announcing such approval, the judge or
commissioner shall require the claimant to submit current in-
formation as to collateral sources on forms prescribed by the
clerk of the court of claims. The judge or commissioner shall
reduce an award of reparations or deny a claim for an award
of reparations that is otherwise payable to a claimant to the
extent that the economic loss upon which the claim is based is
or will be recouped from other persons including collateral
sources, or if such reduction or denial is determined to be
reasonable because of the contributory misconduct of the
claimant or of a victim through whom he claims. If an award
is reduced or a claim is denied because of the expected recoup-
ment of all or part of the economic loss of the claimant from
a collateral source, the amount of the award or the denial of
the claim shall be conditioned upon the claimant’s economic
loss being recouped by the collateral source: Provided, That
if it is thereafter determined that the claimant will not receive
all or part of the expected recoupment, the claim shall be re-
opened and an award shall be approved in an amount equal to
the amount of expected recoupment that it is determined the
claimant will not receive from the collateral source, subject
to the limitations set forth in subsection (g) of this section.

(g) Reparations payable to a victim and to all other claim-
ants sustaining economic loss because of injury to or the death
of that victim shall not exceed twenty thousand dollars in the
aggregate.


(a) If either the attorney general or the claimant disagrees
with the approval of an award or the denial of a claim in the
summary manner set forth on the preceding sections of this
article, the attorney general or the claimant, or both, shall file
with the clerk a request for hearing. Such request shall be
filed within twenty-one days after notification by the judge or
commissioner of his decision.

(b) Upon receipt of a request for hearing, the clerk shall
place the claim upon the regular docket of the court for hear-
ing, shall advise the attorney general and the claimant of the
receipt of the request and docketing of the claim, and shall re-
quest the attorney general to commence negotiations with the
claimant.

(c) During the period of negotiations and pending hearing,
the attorney general, shall, if possible, reach an agreement with
the claimant regarding the facts upon which the claim is based
so as to avoid the necessity for the introduction of evidence
at the hearing. If the parties are unable to agree upon the facts
an attempt shall be made to stipulate the questions of fact in
issue.

(d) The hearing held in accordance with this section shall
be before the court of claims, en banc, or, if the claim was
previously assigned to and decided by a judge of the court,
such hearing shall be held before the two remaining judges and
a commissioner: Provided, That if the amount of the economic
loss alleged in the application is less than ten thousand dollars,
the hearing may be held before a single judge or commissioner
to whom the claim has not been previously assigned. Hearings
before a single judge or commissioner may, in the discretion
of such hearing officer, be held at such locations throughout
the state as will facilitate the appearance of the claimant and
witnesses.

(e) The hearing shall be conducted so as to disclose all
material facts and issues. Judges and commissioners may exam-
ine or cross-examine witnesses. The judges and commissioners
may call witnesses or require evidence not produced by the
parties; may stipulate the questions to be argued by the parties;
and may continue the hearing until some subsequent time to
permit a more complete presentation of the claim.

(f) After the close of the hearing the court, judge or com-
missioner, as the case may be, shall consider the claim and shall
conclude its determination, if possible, within thirty days.

(g) The court shall adopt and may from time to time amend
rules of procedure, in accordance with the provisions of this
article, governing proceedings before the court. Rules shall be
designed to assure a simple, expeditious and inexpensive con-
ideration of claims. Rules shall permit a claimant to appear
in his own behalf or be represented by counsel.

Under its rules, the court shall not be bound by the usual
common law or statutory rules of evidence. The court may ac-
cept and weigh, in accordance with its evidential value, any
information that will assist the court in determining the factual
basis of a claim.


(a) There is no privilege, except the privileges arising from
the attorney-client relationship, as to communications or re-
cords that are relevant to the physical, mental or emotional
condition of the claimant or victim in a proceeding under this
article in which that condition is an element.

(b) If the mental, physical or emotional condition of a
victim or claimant is material to a claim for an award of re-
parations, the court, judge or commissioner may order the
victim or claimant to submit to a mental or physical exami-
nation by a physician or psychologist, and may order an au-
topsy of a deceased victim. The order may be made for good
cause shown and upon notice to the person to be examined and
to the claimant and the attorney general. The order shall speci-
fy the time, place, manner, conditions and scope of the exami-
nation or autopsy and the person by whom it is to be made,
and shall require the person who performs the examination or
autopsy to file with the clerk of the court of claims a detailed
written report of the examination or autopsy. The report shall
set out the findings, including the results of all tests made,
diagnosis, prognosis, and other conclusions and reports of
earlier examinations of the same conditions. On request of
the person examined, the clerk of the court of claims shall
furnish him a copy of the report. If the victim is deceased, the
clerk of the court of claims, on request, shall furnish the
claimant a copy of the report.

(c) The court, or a judge or commissioner thereof, may
order law-enforcement officers employed by the state or any
political subdivision thereof to provide it or the attorney gen-
eral with copies of any information or data gathered in the
investigation of the criminally injurious conduct that is the
basis of any claim to enable it to determine whether, and the
extent to which, a claimant qualifies for an award of repara-
tions.

(d) The court, or a judge or commissioner thereof, may
require the claimant to supplement the application for an
award of reparations with any reasonably available medical
or psychological reports relating to the injury for which the
award of reparations is claimed.

(e) The court, a judge, a commissioner, or the attorney
general, in a claim arising out of a violation of article eight-b,
chapter sixty-one of this code, shall not request the victim or
the claimant to supply any evidence of specific instances of the
victim's sexual activity, or reputation evidence of the victim's
sexual activity unless it involves evidence of the victim's past
sexual activity with the offender and then only to the extent
that the court, the commissioner, or the attorney general finds
that the evidence is relevant to a fact at issue in the claim.
(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the court of claims, a judge or commissioner thereof, or the attorney general shall have access to the records of juvenile proceedings which bear upon an application for reparations under this article. The court of claims, the judges and commissioners thereof, and the attorney general, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of reparations, the court, judge or commissioner may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his powers and duties, the attorney general may petition the court of claims for an appropriate order, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of prosecution or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of reparations whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

The court, or a judge or commissioner thereof, shall suspend, upon a request of the attorney general, the proceedings in any claim for an award of reparations pending disposition of a criminal prosecution that has been commenced or is imminent.


As part of an order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid from
the crime victims reparation fund to the attorney representing a claimant in a proceeding under this article. Attorney's fees may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and attorney's fees may be awarded whether or not an award of reparations is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the court to appear in a hearing on a claim for an award of reparations shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code, to be paid from the crime victims reparation fund.


(a) The clerk shall certify to the department of finance and administration, on or before the twentieth day of November of each year, a list of all claims pursuant to this article for which the court has made a final determination and approved an award since the last such certificate.

(b) The governor shall include in his proposed budget bill and revenue estimates:

(1) an estimate of the balance and receipts anticipated in the crime victims reparation fund,

(2) an itemized report of the approved awards recommended by the court to the Legislature,

(3) such recommendations to the Legislature for appropriations from the crime victims reparation fund as he may deem appropriate for the payment of fees, costs and expenses incurred, due or payable at any time from such fund, and

(4) such recommendations to the Legislature for appropriations for the payment of claims arising under this article, whether accrued and determined by the court and included in the itemization of awards mentioned in this section or arising during the ensuing fiscal year.

(c) The Legislature shall, by general law, provide for the
authorization to pay the itemized awards arising under this
article or so much thereof as may be deemed appropriate or for
awards arising during the ensuing fiscal year and provide by
appropriation from the crime victims reparation fund for the
payment of such awards authorized and for the payment of
fees, costs and expenses as from time to time may be appro-
priate. The clerk shall certify each authorized award and the
amount thereof and make requisition upon the crime victims
reparation fund relating thereto, to the auditor. The auditor
shall issue his warrant to the treasurer without further exami-
nation or review of the claim except for the question of a suffi-
cient unexpended balance in the appropriation.


The court of claims shall prepare and transmit annually to
the governor and the Legislature a report of the activities of
the court of claims under this article. The report shall include
the number of claims filed, the number of awards made and
the amount of each award, and a statistical summary of claims
and awards made and denied including the average size of
claims and awards; the balance in the crime victims repara-
tion fund with a listing by source and amount of the moneys
that have been deposited in the fund; the amount that has
been withdrawn from the fund, including separate listings of
the administrative costs incurred by the court of claims, com-
pensation of judges, commissioners and court personnel, the
amount awarded as attorneys' fees, and the amount with-
drawn by the attorney general after certification of his costs
of investigation and recommendation. The attorney general
and auditor of the state shall assist the court of claims in the
preparation of the report required by this section.


If an award of reparations is made under the provisions of
this article and is not reduced on account of the availability of
payment by a collateral source, the state, upon the payment of
the award or a part of the award, shall be subrogated to all
of the claimant's rights to receive or recover benefits or
advantages for economic loss for which an award of repara-
tions was made from such source if it were a collateral source
or would be a collateral source if it were readily available to
the victim or claimant. The claimant may sue the offender for
any damages or injuries caused by the offender's criminally
injurious conduct and not compensated for by an award of
reparations. The claimant may join with the attorney general
as co-plaintiff in any action against the offender. All moneys
that are collected by the state pursuant to its rights of
subrogation as provided in this section shall be deposited in
the crime victims reparation fund.


Subrogation rights which a collateral source may have shall
not extend to a recovery from a claimant of all or any part of
an award made under this article. A collateral source may not
apply, in the name of a claimant or otherwise, for an award
of reparations based upon injury to a claimant to whose rights
the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; ex-
ceptions.

An award is not subject to execution, attachment, garnish-
ment, or other process, except that, upon receipt of an award
by a claimant, the part of the award that is for allowable
expense is not exempt from such action by a creditor to the
extent that he provides products, services or accommodations
the costs of which are included in the award and the part of
the award that is for work loss shall not be exempt from such
action to secure payment of alimony, maintenance or child
support.


(a) The clerk of the court of claims, with the assistance of
the attorney general, shall prepare an information brochure
for the benefit of the general public, outlining the rights of
claimants and procedures to be followed under this article.
Copies of such brochure shall be distributed to law-enforce-
ment agencies in the state, and be made available to other
interested persons.

(b) Any law-enforcement agency that investigates an offense
committed in this state involving personal injury, shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the availability of an award of reparations and advise such persons that an application for an award of reparations may be obtained from the clerk of the court of claims.


The court of claims may promulgate rules and regulations to implement the provisions of this article.


(a) The provisions of this article shall not apply to any injury or death resulting from criminally injurious conduct which occurred on or before the thirty-first day of December, one thousand nine hundred eighty-one, or on or after the first day of January, one thousand nine hundred eighty-six.

(b) Any and all funds remaining in the crime victims reparation fund after the payment of claims under this article shall on the first day of July, one thousand nine hundred eighty-seven, revert to the general revenue fund.

CHAPTER 62

(H. B. 933–By Mr. Speaker, Mr. See, and Mr. Tompkins)

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

AN ACT to amend and reenact section twenty-four, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obtaining money and property by false pretenses and disposing of property to defraud creditors; providing certain criminal penalties therefor; making it a crime for any person, firm or corporation to obtain labor, services or other thing of value from another by certain false pretenses, with intent to defraud; and providing criminal penalties therefor.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

(a) If any person obtain from another, by any false pretense, token or representation, with intent to defraud, money, goods or other property which may be the subject of larceny, or, if he obtain from another any money, goods or other property, which may be the subject of larceny, on credit, by representing that there is money due him, or to become due him, and shall assign his claim for such money, in writing, to the person from whom he shall obtain such money, goods or other property, and shall afterwards collect the same without the consent of such assignee, with intent to defraud, he shall, in either case, be deemed guilty of larceny, and, if the value of the money, goods or other property is two hundred dollars or more, such person shall be guilty of a felony, and, upon conviction thereof, shall be confined in a penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in the county jail not more than one year and be fined not exceeding five hundred dollars. If the value of the money, goods or other property is less than two hundred dollars, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed one year or fined not to exceed five hundred dollars, or both, in the discretion of the court. If any person obtain by any false pretense, token or representation, with intent to defraud, the signature of any other person to a writing, the false making whereof would be forgery, such person shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or in the discretion of the court, be confined in jail not more than one year and be fined not exceeding five
hundred dollars. And any person who shall remove any of his property out of any county with intent to prevent the same from being levied upon by any execution, or who shall secrete, assign or convey, or otherwise dispose of any of his property with intent to defraud any creditor or prevent such property being made liable for payment of his debts, and any person who shall receive such property, with such intent, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than one thousand dollars and be imprisoned in the county jail not exceeding one year. And when the property so removed, secreted, concealed, assigned, conveyed, received or otherwise disposed of, shall be worth fifty dollars or less, such offense shall be tried by a magistrate in the mode prescribed for the trial of other criminal offenses by a magistrate: Provided, That upon conviction for such offense before a magistrate the person so convicted shall be fined not exceeding fifty dollars and confined in the county jail not exceeding thirty days. But nothing in this section contained shall prevent any creditor from proceeding against any such fraudulent debtor as provided in article five, chapter thirty-eight, and in article seven, chapter fifty-three of this code, or of any other remedy in equity or at law now existing.

(b) If any person, firm or corporation obtain labor, services or any other such thing of value from another, by any false pretense, token or representation, with intent to defraud, such person, firm or corporation, if the value of the labor, services or any other such thing of value is two hundred dollars or more, shall be guilty of a felony, and, upon conviction thereof, shall be confined in a penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than five hundred dollars. If the value of the labor, services or any other such thing of value is less than two hundred dollars, such person, firm or corporation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed one year or fined not to exceed five hundred dollars, or both, in the discretion of the court.
AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-c, relating to making it a crime to intercept or monitor certain customer telephone communications and providing a criminal penalty therefor; providing for circumstances by which certain telephone communications may be monitored; and providing for certain exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.

1 (a) It is unlawful for any person, firm or corporation to intercept or monitor, or to attempt to intercept or monitor, the transmission of a message, signal or other communication by telephone between an employee or similar agent of such person, firm or corporation and a customer of such person, firm or corporation unless such person, firm or corporation does all of the following:

1 (1) Clearly marks each telephone instrument in the possession of said person, firm or corporation from which any such communication may be intercepted or in any way monitored, with accompanying explanation in each telephone directory at the next succeeding publication after enactment of this section and all succeeding publications used by its employees or customers.

1 (2) Throughout the period of each such interception or
monitoring or attempted interception or monitoring, utilizes an automated tone warning device that produces a distinct warning signal or beep tone, which signal or tone is clearly audible to each party to the communication or by other audible means clearly indicates that such message, signal or other communication is being monitored or intercepted.

Any person, firm or corporation violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Nothing contained in this section shall require marking of telephone instruments and directories, nor require consent to interception or monitoring, nor require utilization of an automated tone warning device, in the case of a wiretap or other form of monitoring which is engaged in for the sole purpose of law enforcement and which is lawful in all other respects.

(c) The public service commission shall not issue any rule or regulation requiring or suggesting the monitoring of any message, signal or other communication by telephone to or from any telephone utility customer so as to obtain the content or substance of any such communication.

CHAPTER 64

(S. B. 641—Originating in the Senate Committee on Finance)

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

AN ACT to amend and reenact section thirty-nine-e, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the service charge for dishonored checks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any such dishonored check may impose a service charge not to exceed ten dollars. No service charge shall be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of such notice shall be substantially as follows:

“You are hereby notified that a check, number ____________, issued by you on (date of check), drawn upon (name of bank), and payable to _________________, has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of such check plus a ten dollar service charge to the undersigned at _________________. You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated ______________________, 19_______

(Signed).”

The provisions of this section shall not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of said dishonored check, draft or order.

The holder or payee of any such check, draft or note shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before
a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through such court and any holder or payee unlawfully accepting payment after such time shall be liable for all costs which may be imposed by magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of such payment.

AN ACT to amend and reenact section thirty-nine-h, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes and their punishment; crimes against property; payment of costs in worthless check cases; disposition of certain costs; providing that costs in such cases are distributed to magistrates to be used in meeting expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

1 In any prosecution under sections thirty-nine or thirty-nine-a of this article such costs as may otherwise be imposed against the drawer of any such check, draft or order shall be imposed on the person initiating the prosecution if payment of the check, draft or order is accepted by the payee or holder thereof after the filing of a complaint for warrant; if the payee or holder had reason to believe that the check, draft
or order would be dishonored or if the same was postdated; or
if the matter is dismissed for failure to prosecute.

Costs collected by magistrate court for issuance of notice as
authorized by section thirty-nine-g of this article shall be paid
into the special county fund created by the provisions of
section four, article three, chapter fifty of this code. Such
costs shall not be included in any calculation of the amount of
funds to be retained by the county but shall be accounted for
separately and retained by the county notwithstanding any
provision of law directing the payment of costs to the state.

A county may appropriate and spend from such fund such
sums as shall be necessary to defray the expenses of
providing bailiff and service of process services by the sheriff,
to defray the cost of acquiring or renting magistrate court
offices and providing utilities and telephones therefor and to
defray the expenses of such other services which by the terms
of this chapter are to be provided to magistrate court by the
county.

CHAPTER 66

(Com. Sub. for H. B. 881—By Mr. Teets)

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

AN ACT to amend article three, chapter sixty-one of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
fifty-one, relating to the regulation of certain purchases of
precious metals and precious gems in this state; imposing record-
keeping and reporting requirements upon purchasers thereof;
prohibiting the disposal, alteration or removal from the state
of said metals and gems for a ten-day period after purchase;
giving definitions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-one of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended by
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-51. Precious metals and gem dealers; records; prohibited acts.

(a) Each person, firm or corporation in the business of purchasing precious metals or precious gems, or both, for any purpose other than personal, family or household use, shall be subject to the provisions of this section. Each such purchaser shall secure from the seller of the precious metal or precious gem sufficient proof of lawful ownership or a sworn affidavit of ownership, the original of which shall be retained by the purchaser.

(b) Each such purchaser of a precious metal or precious gem shall truly and accurately list each purchase in a permanent record book clearly showing the kind, character and amount of metal or gem purchased, any special or unique quality or item of description concerning the metal or gem purchased, the date of purchase, the full name and residence address and mailing address of the seller, and any telephone number of the seller. Such record book shall be open to inspection by any law-enforcement officer in this state during normal business hours of the purchaser. If any such purchase is made within a municipality, the purchaser shall report all the information required by this section in writing to the chief of the police department of the municipality within twenty-four hours of the purchase. If any such purchase is made outside of a municipality, the purchaser shall report all the information required by this section in writing to the sheriff of the county wherein the purchase was made within twenty-four hours of the purchase. The information required by this section shall be preserved for a period of not less than three years.

(c) Each such purchaser of a precious metal or precious gem shall not, for a period of ten calendar days after the
purchase, dispose of such metal or gem, remove such metal or gem from the state or alter in any way the form or substance of such metal or gem.

(d) As used in this section, "precious metal" means any gold, silver, platinum or other valuable metal; and "precious gem" means any diamond, pearl, emerald, ruby, sapphire or similar precious stone.

(e) Any person, firm or corporation violating any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than two years, or, in the discretion of the court, be confined in jail not more than one year or shall be fined not less than one hundred dollars nor more than five thousand dollars, or both fined and so confined in either the penitentiary or jail, all in the discretion of the court.

CHAPTER 67
(Com. Sub. for S. B. 560—by Mr. Palumbo)

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

AN ACT to amend and reenact article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crimes and their punishment; shoplifting; defining the offense of shoplifting; providing evidence; providing criminal penalties for first, second and third convictions; mandatory penalty; shoplifting constituting breach of peace; detention of suspected shoplifter; making shoplifters civilly liable; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:
ARTICLE 3A. SHOPLIFTING.

§61-3A-4. Shoplifting to constitute breach of peace; detention.


1 (a) A person commits the offense of shoplifting if, with
2 intent to appropriate merchandise without paying the
3 merchant's stated price for the merchandise, such person,
4 alone or in concert with another person, knowingly:
5 (1) Conceals the merchandise upon his or her person or in
6 another manner; or
7 (2) Removes or causes the removal of merchandise from
8 the mercantile establishment or beyond the last station for
9 payment; or
10 (3) Alters, transfers or removes any price marking affixed
11 to the merchandise; or
12 (4) Transfers the merchandise from one container to
13 another; or
14 (5) Causes the cash register or other sales recording device
15 to reflect less than the merchant's stated price for the
16 merchandise; or
17 (6) Removes a shopping cart from the premises of the
18 mercantile establishment.
19 (b) A person also commits the offense of shoplifting if
20 such person, alone or in concert with another person,
21 knowingly and with intent obtains an exchange or refund or
22 attempts to obtain an exchange or refund for merchandise
23 which has not been purchased from the mercantile
24 establishment.


1 (a) Evidence of stated price or ownership of merchandise
2 may include, but is not limited to:
3 (1) The actual merchandise alleged to have been
4 shoplifted; or
5 (2) The unaltered content of the price tag or marking from
6 such merchandise; or
7 (3) Properly identified photographs of such merchandise.
8 (b) Any merchant may testify at a trial as to the stated
9 price or ownership of merchandise, as well as to other matters
10 pertaining to the case.


1 A person convicted of shoplifting shall be punished as
2 follows:
3 (a) First offense conviction.—Upon a first shoplifting
4 conviction:
5 (1) When the value of the merchandise is less than or equal
6 to one hundred dollars, the defendant shall be guilty of a
7 misdemeanor and shall be fined not more than two hundred
8 fifty dollars.
9 (2) When the value of the merchandise exceeds one
10 hundred dollars, the defendant shall be guilty of a
11 misdemeanor and shall be fined not less than one hundred
12 dollars, nor more than five hundred dollars, and such fine
13 shall not be suspended; or the defendant shall be imprisoned
14 in the county jail not more than sixty days; or both fined and
15 imprisoned.
16 (b) Second offense conviction.—Upon a second shoplifting
17 conviction:
18 (1) When the value of the merchandise is less than or equal
19 to one hundred dollars, the defendant shall be guilty of a
20 misdemeanor and shall be fined not less than one hundred
21 dollars nor more than five hundred dollars, and such fine
22 shall not be suspended; or the defendant shall be imprisoned
23 in the county jail not more than six months; or both fined and
24 imprisoned.
25 (2) When the value of the merchandise exceeds one
26 hundred dollars, the defendant shall be guilty of a
27 misdemeanor and fined not less than five hundred dollars
28 and shall be imprisoned in the county jail for not less than six
29 months nor more than one year. At least thirty days shall
30 actually be spent in confinement and not subject to
31 probation.
(c) Third offense convictions.—Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise, the defendant shall be guilty of a felony and shall be fined not less than five hundred dollars nor more than five thousand dollars, and shall be imprisoned in the penitentiary for one to ten years. At least one year shall actually be spent in confinement and not subject to probation.

(d) Mandatory penalty.—In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment’s rights to recover the stolen merchandise.

(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.


An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law-enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.


(a) General rule.—Any person who commits any of the acts described in section one of this article shall be civilly liable:
(1) To restore the merchandise to the mercantile establishment; and

(2) If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and

(3) For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and

(4) In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars or double the value of the merchandise, whichever is higher.

(b) **Costs and attorneys' fees.**—A merchant who is a prevailing party under this section is entitled to costs.

(c) **Effect of conviction.**—A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by section three of this article is not entitled to recover the penalty imposed by this section.

(d) **Right to demand payment.**—The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit said damages or penalty prior to the commencement of any legal action.

§61-3A-6. **Definitions.**

(a) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.

(b) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.

(c) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not
include adjoining parking lots or adjoining areas of common
use with other establishments.

(d) "Merchandise" means any goods, foodstuffs, wares or
personal property, or any part or portion thereof of any type
or description displayed, held or offered for sale, or a
shopping cart.

(e) "Value of the merchandise" means the merchant's
stated price of the merchandise, or, in the event of altering,
transferring or removing a price marking or causing a cash
register or other sales device to reflect less than the retail
value of the merchandise, as defined in section one of this
article, the difference between the merchant’s stated price of
the merchandise and the altered price.

CHAPTER 68
(S. B. 577—By Mr. Boettner)

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

AN ACT to amend and reenact section two, article one-c, chapter
sixty-two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to criminal
procedure; bail; bail defined; forms; receipts; providing an
increase in the maximum cash bail which a magistrate may
receive.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. BAIL.

§62-1C-2. Bail defined; form; receipts.

Bail is security for the appearance of a defendant to answer
to a specific criminal charge before any court or magistrate at
a specific time or at any time to which the case may be
continued. It may take any of the following forms:
(a) The deposit by the defendant or by some other person for him of cash, provided, if cash totaling more than twenty-five hundred dollars for one or more offenses is tendered as bail to a magistrate by or on behalf of any defendant, the magistrate shall not receive same but shall direct that the sum be forthwith deposited with the clerk of the court having jurisdiction to try criminal cases.

(b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.

(c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.

All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him.

CHAPTER 69

(Com. Sub. for H. B. 1176—By Mr. Tucker)

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

AN ACT to amend and reenact sections two, thirteen and nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation and parole generally; the powers and duties of the board of parole; eligibility for probation or parole; ineligibility for probation or parole when firearm involved; the limitations and conditions with respect to such ineligibility; procedure for granting parole; violation of parole; and admission of parolee to bail.

Be it enacted by the Legislature of West Virginia:

That sections two, thirteen and nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.


§62-12-2. Eligibility for probation.

(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) (1) 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 clearly stated and included in the indictment or presentment by which such person is charged and is either (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, upon submitting to such jury a special interrogatory for such purpose or (iii) found by the court, if the matter be tried by the court, without a jury.
(2) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(A) shall apply to all applicable offenses occurring on or after the first day of August of that year;

(B) shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(D) shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment; and

Insofar as such amendments relate to mandatory sentences without probation, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(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, 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) (A) 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: Provided, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, shall not be eligible for parole prior to serving a minimum of five years of his sentence or one-third of his definite term sentence, whichever shall be the greater. 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. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which such person was charged and was either (i) found by the court at the time of trial upon a plea of guilty or nolo contendere, or (ii) found by the jury upon submitting to such jury a special interrogatory for such purpose if the matter was tried before a jury, or (iii) found by the court, if the matter was tried by the court without a jury.

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 or any other similar means.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:
(i) shall apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(iii) shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(iv) shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment.

Insofar as such amendments relate to mandatory sentences restricting the eligibility for parole, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court;

(2) Shall not be under punishment or in solitary confinement 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 preceding 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 released 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 review the case of every prisoner so eligible, which reconsideration 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 prisoner is under sentence on a felony conviction, the provisions hereof relating to penitentiary prisoners shall apply to and control his release on parole. If such person is serving time on a misdemeanor 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 reprieves, 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, including 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 statement 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 the 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.


If at any time during the period of parole, there shall be reasonable cause to believe that the parolee has violated any of the conditions of his release on parole, the probation and parole officer may arrest him with or without an order or warrant, or the board of probation and parole may issue its written order or warrant for his arrest, which written order or warrant shall be sufficient for his arrest by any officer charged with the duty of executing an ordinary criminal process. The board's written order or warrant delivered to the sheriff against the paroled prisoner shall be a command to keep custody of the parolee for the jurisdiction of the board, and during the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining such paroled prisoner shall be paid out of the
funds appropriated for the penitentiary from which he was paroled.

When a parolee is under arrest for violation of the conditions of his parole, he shall be given a prompt and summary hearing, at which the parolee and his counsel shall be given an opportunity to attend. If at the hearing, it shall appear to the satisfaction of the board that the parolee has violated any condition of his release on parole, or any rules and regulations for his supervision, the board may revoke his parole and may require him to serve in prison the remainder or any portion of his maximum sentence for which, at the time of his release, he was subject to imprisonment: Provided, That if the violation of the conditions of parole or rules and regulations for his supervision is not a felony as set out in section eighteen of this article, the board may, if in its judgment the best interests of justice do not require that the parole be revoked, release him from custody and continue him on parole.

When a parolee has violated the conditions of his release on parole by confession to, or being convicted of any of the crimes mentioned in section eighteen of this article, he shall be returned to the penitentiary of this state to serve the remainder of his maximum sentence, during which remaining part of his sentence he shall be ineligible for further parole.

Whenever the parole of a paroled prisoner has been revoked, the warden shall upon receipt of the board's written order of revocation, convey and transport the paroled prisoner to the penitentiary from which he was granted a release on parole. A paroled prisoner whose parole has been revoked shall remain in custody of the sheriff until delivery to guard sent and duly authorized by the warden for the removal of the paroled prisoner to the penitentiary; the cost of confining such paroled prisoner shall be paid out of the funds appropriated for the penitentiary from which he was paroled.

When a paroled prisoner is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it shall be the duty of the board to cause him to be returned to this state for a summary hearing as provided by
this article. A warrant filed by the board shall stop the
running of his sentence until the paroled prisoner is within
the jurisdiction of West Virginia. Whenever a paroled prisoner
has absconded supervision, the board shall issue its warrant
for his apprehension and return to this state for the summary
hearing provided by this article: Provided, That the board
may, if it be of opinion the best interests of justice do not
require such hearing, cause the paroled absconder to be
released to continue on parole.

CHAPTER 70
(H. B. 1041—By Mr. Givens and Mr. Harman, 33rd Dist.)

[Passed April 4, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article twenty,
chapter nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said
article twenty by adding thereto four new sections, designated
sections nine-a, twenty, twenty-one and twenty-two, all relating
to dogs; increasing the head tax on dogs; posting description of
unlicensed dogs at animal shelters; authorizing county com-
misions to promulgate and enforce certain ordinances, rules
and regulations; requiring owners of dogs which bite any per-
son to confine the dog for rabies observation; the killing of
vicious dogs by humane officers; requirement of special license
for dangerous or vicious dog; and the confinement of female dogs
during period of estrus.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article twenty, chapter nineteen of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that said article twenty
be further amended by adding thereto four new sections, designated
sections nine-a, twenty, twenty-one and twenty-two, all to read as
follows:
ARTICLE 20. DOGS.

§ 19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

§ 19-20-6. County dog warden; rules and regulations for dog control.

§ 19-20-9a. Rabies observation.

§ 19-20-20. Keeping vicious dogs; humane officers may kill such dogs.

§ 19-20-21. License fee for keeping vicious or dangerous dog.


§ 19-20-2. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.

It shall be the duty of the county assessor and his deputies of each county within this state, at the time they are making assessment of the personal property within such county, to assess and collect a head tax of three dollars on each dog, male or female; and in addition to the above, the assessor and his deputies shall have the further duty of collecting any such head tax on dogs as may be levied by the ordinances of each and every municipality within the county. In the event that the owner, keeper or person having in his possession or allowing to remain on any premises under his control any dog above the age of six months, shall refuse or fail to pay such tax, when the same is assessed or within fifteen days thereafter, to the assessor or deputy assessor, then such assessor or deputy assessor shall certify such tax to the county dog warden; if there be no county dog warden he shall certify such tax to the county sheriff, who shall take charge of the dog for which the tax is delinquent and impound the same for a period of fifteen days, for which service he shall be allowed a fee of one dollar and fifty cents to be charged against such delinquent taxpayer in addition to the taxes herein provided for. In case the tax and impounding charge herein provided for shall not have been paid within the period of fifteen days, then the sheriff may sell the impounded dog and deduct the impounding charge and the delinquent tax from the amount received therefor, and return the balance, if any, to the delinquent taxpayer. Should the sheriff fail to sell
the dog so impounded within the time specified herein, he shall kill such dog and dispose of its body.

At the same time as the head tax is assessed, the assessor and his deputies shall, on the forms prescribed under section four of this article, take down the age, sex, color, character of hair (long or short) and breed (if known) and the name and address of the owner, keeper or harborer thereof. When the head tax, and extra charges, if any, are paid, the officer to whom payment is made shall issue a certificate of registration and a registration tag for such dog.

In addition to the assessment and registration above provided for, whenever a dog either is acquired or becomes six months of age after the assessment of the personal property of the owner, keeper or harborer thereof, the said owner, keeper or harborer of said dog shall, within ten days after the acquisition or maturation, register the said dog with the assessor, and pay the head tax thereon unless the prior owner, keeper or harborer paid the head tax.

All certificates of registration and registration tags issued pursuant to the provisions of this section shall be issued for the fiscal year and shall be valid from the date on which issued until the thirtieth day of June of that fiscal year, or until reissued by the assessor or his deputy in the regular performance of his duties, but in no case shall previous registration tags be valid after September thirtieth of the next ensuing fiscal year.

The assessor collecting the head tax on dogs shall be allowed a commission of ten percent upon all such taxes collected by him, and shall turn in to the county treasury ninety percent of such taxes so collected, as are levied by this section; and the assessor shall turn over to the treasurer or other proper officer of each and every municipality within the county ninety percent of such taxes levied by the ordinances of such municipality. All such dog taxes, except those belonging to municipalities, shall be accredited to the dog and kennel fund provided for in section ten of this article. Such dog taxes as are collected for and turned over to municipalities shall be deposited by the proper officer of such
municipalities to such fund and shall be expended in such manner as the law of such municipality may provide. All taxes on dogs not collected by the assessor shall be collected by the regular tax collecting officer of the county and placed to the credit of the dog and kennel fund.

§19-20-6. County dog warden; rules and regulations for dog control.

(a) The county commission of each county may appoint and employ a county dog warden, and such number of deputies, for such time, and at such compensation, as such county commission shall deem reasonable and necessary to enforce the provisions of this code with respect to the control and registration of dogs, the impounding, care and destruction of unlicensed dogs. Such county dog warden may be appointed a deputy assessor for the purpose of collecting the dog tax and registration fees, taking the dog registration and providing the tags authorized by this article. The county dog warden or any deputies may, in the discretion of the county commission, be regularly employed officers or agents of any humane society or society for the prevention of cruelty to animals, organized and operating under the laws of this state and owning, controlling and operating a suitable place within the county for impounding and destroying dogs. In addition to the compensation provided for above, a bounty of fifty cents per dog shall be paid to the county dog warden or deputy who captures an unregistered dog. Such county dog warden and deputy wardens shall each give bond in a sum of not less than one thousand dollars and not more than two thousand dollars conditioned on the faithful performance of their duties. Such bonds shall be filed with the county commission by which such persons are appointed.

The county dog warden and his deputies shall patrol the county in which they are appointed and shall seize on sight and impound any dog more than six months of age found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel. They shall be responsible for the proper care and final disposition of all impounded dogs. The county dog warden shall make a monthly report,
in writing, to the county commission of his county. When
any dog shall have been seized and impounded, the county
dog warden shall forthwith give notice to the owner of such
dog, if such owner be known to the warden, that such dog
has been impounded and that it will be sold or destroyed if
not redeemed within five days. If the owner of such dog be
not known to the dog warden, he shall post a notice in the
county courthouse. The notice shall describe the dog and the
place where seized and shall advise the unknown owner that
such dog will be sold or destroyed if not redeemed within five
days.

(b) Any county commission may promulgate and enforce
such ordinances, rules and regulations, not inconsistent with the
provisions of this article, as it considers necessary or con-
venient for the control and management of all dogs in the
county, or any portion thereof, regardless of the age of any
such dog: Provided, That the county commissions may pro-
mulgate and enforce such ordinances, rules and regulations to
the extent necessary for the implementation of the provisions
contained in this article.

§19-20-9a. Rabies observation.

Any person who owns or harbors a dog, whether licensed or
unlicensed, which bites any other person shall forthwith
confine and quarantine the dog for a period of fourteen days
for rabies observation. If such dog is not so confined and
quarantined, the humane officer, dog warden or sheriff may
cause such dog to be placed in the custody and care of a
licensed veterinarian for such purpose at the owner's expense.

§19-20-20. Keeping vicious dogs; humane officers may kill such
dogs.

Except as provided in section twenty-one of this article, no
person shall own, keep or harbor any dog known by him to be
vicious, dangerous, or in the habit of biting or attacking other
persons, whether or not such dog wears a tag or muzzle. Upon
satisfactory proof before a circuit court or magistrate that
such dog is vicious, dangerous, or in the habit of biting or
attacking other persons or other dogs or animals, the judge
§19-20-21. License fee for keeping vicious or dangerous dog.

Any person who keeps a dog which is generally considered to be vicious, for the purpose of protection, shall acquire a special license therefor from the county assessor. The assessor shall charge ten dollars for such license. Such license shall be required in addition to the license required under section two of this article. The keeper or owner shall properly secure such dog in such a manner so as to prevent injury to a person who lawfully passes through or enters upon the property of the keeper or owner. Nothing contained in this section shall constitute a defense to any action for personal injury, wrongful death or damage to property.


Every person owning or harboring a female dog, whether licensed or unlicensed, shall keep such dog confined in a building or secure enclosure for twenty-five days during the period of estrus.

AN ACT to amend and reenact sections fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including swine as livestock for which owners of dogs are liable for damages caused by their dogs in worrying, wounding or killing livestock or poultry; criminal penalty.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article twenty, chapter nineteen of the code of West Vir-
Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. DOGS.

§19-20-14. Dog killing, wounding or worrying livestock or poultry—Recovery of damages.

§19-20-15. Same—Assessment of damages; appraisers.

§19-20-16. Same—When lawful to kill dog.

§19-20-17. Same—Unlawful to harbor dog; penalty.

§19-20-18. Same—Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill.

§19-20-19. Offenses; criminal penalties; jurisdiction.

§19-20-14. Dog killing, wounding or worrying livestock or poultry—Recovery of damages.

If any dog has killed or assisted in killing, wounding or worrying any sheep, lambs, goats, kids, calves, cattle, swine or poultry out of the enclosure of the owner of the dog, the owner or keeper of the dog shall be liable for the sheep, lambs, goats, kids, calves, cattle, swine or poultry in the amount of the damages sustained, to be recovered in an action before any court or magistrate having jurisdiction of the action. It shall not be necessary to sustain the action to prove that the owner of the dog knew the dog was accustomed to worrying, killing or wounding. A recovery under this section shall bar and preclude the owner of the sheep, lambs, goats, kids, calves, cattle, swine or poultry from obtaining compensation from the county commission under the provisions of this article. If the person suffering the loss or damage cannot ascertain the owner or keeper of the dog, or if the owner or keeper is not financially responsible, then the person suffering the loss or damage may file his claim with and prove the same before the county commission of the county in which the loss or damage is sustained, in the manner provided in this article, and the commission shall pay the loss or damage out of the fund provided for such purposes and according to the provisions of this article. When compensation is so obtained from the county commission, the county commission is authorized to sue under this section and recover as the owner of the sheep, lambs, goats, kids, calves, cattle, swine or poultry. The amount so re-
covered shall be paid into the county treasury; but no suit shall be commenced unless authorized by the county commission.

§19-20-15. Same—Assessment of damages; appraisers.

Authority is hereby given to magistrates and notaries public within this state, and within their respective jurisdictions, to summon three substantial, upright and worthy bona fide residents, citizens and taxpayers of his county to assess the damages suffered by any person on account of the destruction, loss or injury of any sheep, lambs, goats, kids, calves, cattle, swine or poultry by dogs within the county. The appraisers shall be appointed upon the request of a person suffering damages on account of such destruction, loss or injury. The appraisers shall go upon the ground and investigate fully the extent of the destruction, loss or injury, taking all the evidence deemed necessary to arrive at the facts to be passed upon in arriving at the amount of damage, if any, suffered by the party making the complaint. Before the appraisers may be summoned by the magistrate or notary public, the complainant shall be required to make a sworn complaint before the magistrate or notary public, setting out in plain, easily comprehensible terms the facts concerning his damages to the best of his knowledge. After making a full investigation of the facts involved, the appraisers, with the assistance of the magistrate or notary public, shall make a sworn statement and report the facts ascertained and the damages suffered. The report and statement shall be filed with the county commission or the clerk thereof in vacation. The fees and mileage for services allowed in such cases shall be the same as are allowed magistrates, witnesses and arbitrators in magistrates’ courts in this state for similar services. In the event that the appraisers find that the complainant has suffered no damage, then the complainant shall be responsible for and pay all the costs and expenses of the proceeding. In the event that the complainant has suffered damages on account of the destruction, loss or injury of his domestic animals, according to the finding of the appraisers, the owner, keeper or person permitting the dog, or dogs, causing the damage to remain upon the premises under his control shall be liable for all damages sustained by the complainant,
including all costs and necessary expenses. All the damages
shall be collectible by an action at law before any court or
magistrate having jurisdiction of the matter. All papers in
connection with any claim shall be filed and preserved in the
office of the clerk of the county commission.

§19-20-16. Same—When lawful to kill dog.

A person may kill a dog that he may see chasing, worrying,
wounding or killing any sheep, lambs, goats, kids, calves,
cattle, swine or poultry outside of the enclosure of the owner
of the dog unless the chasing or worrying be done by the
direction of the owner of the sheep, lambs, goats, kids, calves,
cattle, swine or poultry.

§19-20-17. Same—Unlawful to harbor dog; penalty.

A person who shall harbor or secrete or aid in secreting
a dog which he knows or has reasons to believe has worried,
chased or killed any sheep, lambs, goats, kids, calves, cattle,
swine or poultry not the property of the owner of the dog,
out of his enclosure, or knowingly permits the same to be
done on any premises under his control, is guilty of a mis-
demeanor, and, upon conviction thereof, before any court or
magistrate having jurisdiction thereof in the county in which
the offense is committed, shall be fined not less than ten
dollars nor more than fifty dollars, and, at the discretion
of the court or magistrate imprisoned in the county jail not
more than thirty days. Each day that the dog is harbored, kept
or secreted shall constitute a separate offense.

§19-20-18. Same—Duty of owner to kill dog; proceeding before
magistrate on failure of owner to kill.

The owner or keeper of a dog that has been worrying,
wounding, chasing or killing any sheep, lambs, goats, kids,
calves, cattle, swine or poultry not the property of the
owner or keeper, out of his enclosure, shall, within forty-
eight hours, after having received notice thereof in writing
from a reliable and trustworthy source, under oath, kill the
dog or direct that the dog be killed. If the owner or keeper
refuses to kill the dog as hereinbefore provided, the magistrate,
upon information, shall summon the owner or keeper of the
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10 dog, and, after receiving satisfactory proof that this dog did
11 the mischief, shall issue a warrant on application being made
12 by the owner of the sheep, lambs, goats, kids, calves, cattle,
13 swine or poultry killed; and give it into the hands of the sheriff,
14 who shall kill the dog forthwith or dispose of by other available
15 methods. The cost of the proceedings shall be paid by the
16 owner or keeper of the dog so killed, including a fee of fifty
17 cents to the officer killing the dog. The owner or keeper of the
18 dog so killed shall, in addition to the costs, be liable to the
19 owner of the sheep, lambs, goats, kids, calves, cattle, swine or
20 poultry or to the county commission for the value of the sheep,
21 lambs, goats, kids, calves, cattle, swine or poultry so killed or
22 injured.

§19-20-19. Offenses; criminal penalties; jurisdiction.

1 A person who violates any of the provisions of this article
2 for which no specific penalty is prescribed is guilty of a mis-
3 demeanor, and, upon conviction thereof, shall be fined not
4 more than one hundred dollars, or imprisoned in the county
5 jail not more than thirty days, or both fined and imprisoned.
6 Magistrates shall have concurrent jurisdiction with the circuit
7 courts to enforce the penalties prescribed by this article.

CHAPTER 72
(H. B. 1613—By Mrs. Burke)

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

AN ACT to amend and reenact section five, article twenty-a, chapter
nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to increasing the cost
of vaccination of dogs for rabies.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-a, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted to read as follows:
ARTICLE 20A. VACCINATION OF DOGS FOR RABIES.

§19-20A-5. Type of vaccine to be furnished; fee.

1 It shall be the duty of the veterinarian, or person vaccinating each animal to furnish vaccine of a type capable of establishing and maintaining immunity for a period of not less than twenty-four months and he shall charge and collect a fee of not more than four dollars for each animal vaccinated, if done at a clinic established by a county commission or, if vaccinated at any other place, he shall charge and collect a reasonable fee for his services.

CHAPTER 73
(S. B. 356—By Mr. Palumbo)

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

AN ACT to amend and reenact section one, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the age of consent for marriage; parental consent of a female and male below the age of eighteen; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-1. Age of consent; exceptions.

1 Except as provided in section eight of this article, for marriage the age of consent of the male and the female shall be eighteen years of age. If, however, the male or female, or both, be under the age of consent as aforesaid, and if a licensed physician shall certify in writing that he has examined said female and found her to be pregnant, or if such female has previously given birth to a child, and if in either of such events consent be obtained from the parents, parent or guardian in the manner prescribed in section eight of this
article, the judge of any court of record of the county, in
which county an application for marriage license may
otherwise be properly filed as provided in this article, may
direct the issuance of a marriage license by the clerk of the
county commission of such county. In the absence or
incapacity to act of the judges of all courts of record of the
county in which the application is to be filed, the order may
be made and directed to the clerk of the county commission
of such county by any judge of a court of record in any
judicial circuit adjoining the circuit in which such county is
located.

CHAPTER 74
(Com. Sub. for S. B. 117—By Mrs. Chace)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article one, chapter forty-eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
twenty-four; and to further amend said chapter forty-eight by
adding thereto a new article, designated article two-c, all
relating to domestic violence and the funding of shelters and
programs; assessing additional fifteen dollar marriage license
fee to be paid into special revenue account; stating legislative
purpose; defining terms; creating family protection
subcommittee to governor's committee on crime, delinquency
and correction; outlining certain duties of the governor's
committee on crime, delinquency and correction and the
family protection subcommittee; establishing requirements
for funding applications; establishing criteria for awarding
funds; requiring annual reports of shelters, programs and the
subcommittee; directing the governor's committee to seek
funds and assistance from other agencies; and requiring
law-enforcement and other public officers to refer certain
persons to shelters and programs.
Be it enacted by the Legislature of West Virginia:

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

Article

1. Marriage.
2C. Family Protection Shelter Support Act.

ARTICLE 1. MARRIAGE.

§48-1-24. Additional fee to be collected for each marriage license issued.

In addition to any fee heretofore established for the issuance of a marriage license, the county clerk shall collect a sum of fifteen dollars for each marriage license issued which additional sum shall be paid into a special revenue account of the state treasury to be dispersed to local family protection shelters as provided in article two-c of this chapter.

ARTICLE 2C. FAMILY PROTECTION SHELTER SUPPORT ACT.

§48-2C-1. Purpose.

The Legislature hereby declares its intent to assist local communities in maintaining shelters to provide services and to house and care for, on a temporary basis, victims of domestic violence or abuse and their children.


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

(a) "Family protection program" or "program" means a
program offered by a locally controlled organization comprised of concerned individuals organized primarily for the purpose of providing shelter and services to victims of domestic violence or abuse and their children;

(b) "Family protection shelter" or "shelter" means a facility created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence or abuse and their children and for providing services to them, which services may include counseling services where appropriate;

(c) "Family protection subcommittee" or "subcommittee" means that subcommittee of the governor's committee on crime, delinquency and correction established pursuant to section three of this article; and

(d) "Governor's committee" means the governor's committee on crime, delinquency and correction established as a state planning agency by the provisions of section one, article nine, chapter fifteen of this code.

§48-2C-3. Family protection subcommittee.

(a) A subcommittee of the governor's committee on crime, delinquency and correction shall be created and assigned primary responsibility for review and administration of programs for the funding of family protection shelters and programs. The subcommittee shall be comprised of five members of the governor's committee who represent consumers or the public-at-large. At least three of the members of the subcommittee shall be persons identified in their separate communities across the state for past and continuing involvement in local activities promoting local family protection shelters and programs.

(b) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson or of a majority of the subcommittee members. A majority of the members of the subcommittee constitutes a quorum for the transaction of business.

§48-2C-4. Duties of governor's committee.

It is the duty of the governor's committee, upon recommendation of the family protection subcommittee:
(a) To receive and consider applications for the development and maintenance of shelters and to approve or reject the same within forty-five days after receipt of applications;

(b) To facilitate the formation and operation of the family protection subcommittee;

(c) To distribute funds to a shelter within forty-five days after approval of its proposal;

(d) To evaluate annually each shelter to determine its compliance with the goals and objectives set out in its original application for funding;

(e) To seek appropriate additional funding to supplement the state appropriations for shelters and programs; and

(f) To award to shelters for each fiscal year a total sum equal to no less than ninety-five percent of the total funds collected and paid over during that fiscal year to the special revenue account established pursuant to section twenty-four, article one of this chapter and to expend during said period a sum not in excess of five percent of said funds for costs of administering the provisions of this article.

§48-2C-5. Funding application requirements.

(a) A shelter or program may apply to the governor's committee for a grant of funds as provided by this article. The application shall include all of the following:

(1) Evidence that the organization submitting the application is incorporated in this state as a nonprofit corporation;

(2) A list of the incorporators of the corporation and a list of the officers and the board of directors;

(3) The proposed budget of the shelter or program for the following fiscal year;

(4) A summary of the services proposed to be offered in the following fiscal year by the shelter or program;

(5) An evaluation of local needs for a shelter or program; and
(6) An estimate of the number of people to be served by the shelter or program during the following fiscal year.

(b) In order to qualify for a grant of funds under this article, each family protection shelter or program shall:

(1) Provide or propose to provide a facility which will serve as temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children;

(2) Be incorporated in this state as a nonprofit corporation;

(3) Have a board of directors which represents the racial, ethnic and socio-economic diversity of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse;

(4) Receive at least sixty-five percent of its funds from sources other than funds distributed under this article. These sources may be public or private and may include contribution of goods or services; and

(5) Require persons employed by or volunteering services to the shelter or program to maintain the confidentiality of any information which may identify individuals served by it.

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the shelter or program may not be refunded until the discrimination ceases.

(d) A family protection shelter program may not be refunded if its original application projected the provision of residential services and such services were not provided in the first six months following disbursement of the original funds under this article: Provided, That upon a subsequent showing that the funds were used in the manner proposed in the original application, the shelter or program is not barred from subsequent funding.

§48-2C-6. Award provisions.

Grants made pursuant to this article shall be awarded on the basis of the following criteria:
(a) Demonstration of local need for proposed services;
(b) Merit of project as proposed;
(c) Demonstration of local control of the shelter or program;
(d) Administrative design and efficiency of the project;
(e) No portion of the award granted shall be used for salaries, wages or personal services.

§48-2C-7. Annual reports of shelter and programs.
A shelter or program receiving funds pursuant to this article shall file an annual report with the subcommittee by the thirty-first day of each October for the prior fiscal year. The report shall include statistics on the number of persons served, the relationship of the victim to the abuser, services provided to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care or legal services and shall include the results of an independent audit. No information contained in the report may identify any person served by the shelter or enable any person to determine the identity of any such person.

§48-2C-8. Governor's committee annual reports.
By the first day of January of each year, the subcommittee shall submit to the governor and, upon request to members of the Legislature, a report which shall contain, but not be limited to, the following information:

(a) A summary of the work and activities of the governor's committee and the subcommittee relating to administration of this article during the preceding fiscal year;
(b) The number of persons treated or assisted by shelters receiving funding through the governor's committee; and
(c) A listing of services or efforts organized to prevent the potential for domestic violence or abuse as identified by the subcommittee, the estimated annual costs of services to prevent the potential for domestic violence, identification of possible funding sources for such services and the projected benefits of providing such services.
§48-2C-9. **Referral to shelters.**

1 Where shelters are available, any law-enforcement officer or
2 any public authority investigating an alleged incident of
3 domestic violence shall advise the person subject to abuse of
4 the availability of the family protection shelter to which such
5 person may be admitted.

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**CHAPTER 75**  
(Com. Sub. for H. B. 806—By Mr. Hendricks)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section four-a, relating to grounds for divorce; providing for divorce on the ground of insanity; providing for divorce on ground of irreconcilable differences when defendant files verified answer that admits or avers the same; providing a form of verified answer; and requiring circuit clerks to maintain and provide said form at no charge.

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

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

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

§48-2-4. **Grounds for divorce.**

§48-2-4a. **Form of verified answer.**

§48-2-4. **Grounds for divorce.**

1 (a) A divorce may be ordered:

2 (1) For adultery; or
(2) When either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime which is a felony, and such conviction has been final; or

(3) To the party abandoned, when either party willfully abandons or deserts the other for six months; or

(4) For cruel or inhuman treatment by either party against the other, which includes reasonable apprehension of bodily harm, false accusation of adultery or homosexuality, conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable: Provided, That under no circumstances shall it be necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce; or

(5) For habitual drunkenness of either party subsequent to the marriage; or

(6) For the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic or dangerous drug defined in this code; or

(7) Where the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, whether such separation was the voluntary act of one of the parties or by the mutual consent of the parties: Provided, That a plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party's obtaining a divorce on this ground: Provided, however, That if alimony is sought under the provision of section fifteen of this article, the court may inquire into the question of who is the party at fault and may award alimony according to the right of the matter: Provided further, That this determination shall not affect the right of either party to obtain a divorce on this ground; or

(8) For permanent and incurable insanity, only if the person is permanently and incurably insane and has been confined in a mental hospital or other similar institution for a
period of not less than three consecutive years next preceding
the filing of the complaint and the court has heard competent
medical testimony that such insanity is permanently incur-
able: Provided, That a court granting a divorce on this grounds
may in its discretion order support and maintenance for the
permanently incurably insane party by other: Provided, how-
ever, That in an action for divorce or annulment, where the
plaintiff is permanently incurably insane the defendant shall
not enter a plea of recrimination based upon the insanity of
the plaintiff; or

(9) For abuse or neglect of a child of the parties or of
one of the parties, “abuse” meaning any physical or mental
injury inflicted on such child including, but not limited to,
sexual molestation; and “neglect” is willful failure to provide,
by a party who has legal responsibility for such child, the
necessary support, education as required by law, or medical,
surgical or other care necessary for the well-being of such
child: Provided, That a divorce shall not be granted on this
ground except upon clear and convincing evidence sufficient
to justify permanently depriving the offending party of his
parental rights to the custody and control of the abused or
neglected child; or

(10) If one party to a marriage shall file a verified com-
plaint, for divorce, against the other, alleging that irrecon-
cilable differences have arisen between the parties, and stat-
ing the names of the dependent children of the parties or of
either of them, and if the other party shall file a verified answer
to the complaint and admit or aver that irreconcilable differ-
ences exist between the parties, the court shall grant a divorce:
Provided, That the defendant may file and serve an answer
with or without an attorney, and said verified answer shall be
sufficient if it is of the form as set out in section four-a of this
article: Provided, however, That the circuit clerk of each
county shall maintain sufficient supplies of said form and
provide the same to any person at no charge. No corroboration
shall be required of the ground for the divorce or the issues of
jurisdiction or venue or any other proof for a divorce on the
ground of irreconcilable differences of the parties. The court
may make orders for or approve, modify or reject any agree-
ment between the parties pertaining to just and equitable, (i) alimony, (ii) custody, support or maintenance of children, or (iii) visitation rights.

(b) It shall not be necessary to allege the facts constituting the ground or grounds relied upon, and a complaint or counter complaint shall be sufficient if any one of the grounds is alleged in the language of such ground as set forth in subsection (a) of this section.

§48-2-4a. Form of verified answer.

A verified answer to a divorce complaint alleging as one of the grounds for divorce, the ground of irreconcilable differences as contained in subdivision (10), subsection (a), section four of this article, may be in the form or effect as follows:

IN THE CIRCUIT COURT OF .......... COUNTY, WEST VIRGINIA

Plaintiff

vs.

CIVIL ACTION NO. .......... ...

Defendant

ANSWER

Now comes the defendant for answer to the complaint and says as follows:

(1) The defendant admits all the allegations contained in the complaint except the allegations contained in paragraph numbers (s) .......... ...., which allegations the defendant denies.

(2) That irreconcilable differences exist between the parties.

Defendant
VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF _____________________________,

_____________________________________, the defendant named in the foregoing answer, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, the defendant believes them to be true.

______________________________
Defendant

Taken, sworn to and subscribed before me this _________ day of ______, _______.

My commission expires _____________________________

______________________________
Notary Public

CERTIFICATE OF SERVICE

I have mailed a true copy of the foregoing answer to ______, plaintiff's attorney, by first-class mail, at his last known address at ________ on the _______ date of ________, _______.

______________________________
Defendant.

CHAPTER 76

(Com. Sub. for H. B. 713—By Mr. Farley)

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

AN ACT to amend article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section
ten-a, relating to privileged communications between clergyman and parties to actions.

Be it enacted by the legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-10a. Communications between clergyman and party.

In any action brought pursuant to the provisions of this article, no priest, minister, rabbi or other clergyman, as defined in section twelve-a, article one of this chapter, of any religious denomination or organization who is not a party to said action shall be compelled to testify regarding any communications or statements made to such clergyman in his capacity as spiritual counselor or spiritual adviser by a party to said action, if (a) both the clergyman and the party making such communications or statements claim that the communications or statements were made to the clergyman in his capacity as a clergyman and spiritual counselor or spiritual adviser to such party; and (b) no person, other than the clergyman, such party and the spouse of such party, was present when such communications or statements were made; and (c) the party making such communications or statements does not either consent to their disclosure or otherwise waive the privilege granted by this section: Provided, That the privilege granted by this section shall be in addition to and not in derogation of any other privileges recognized by law.

CHAPTER 77

(H. B. 1143—By Mr. Chambers and Mr. Gilliam)

[Passed March 5, 1981; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended, relating to allowing either spouse to maintain an action for separate maintenance in the circuit courts of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.


Whenever a spouse shall, without good and sufficient cause, have failed to provide suitable support for the other spouse, or have abandoned or deserted such spouse, or if one spouse shall have grounds for divorce, the court of any county that would have jurisdiction of an action for divorce between the parties, shall, at the action of such spouse, whether or not a divorce be prayed for, order to such spouse as alimony and separate maintenance such sum out of the other spouse's earnings or income as the court may determine, considering the circumstances of the parties and their stations in life, and may prohibit the other spouse from imposing any restraint on the personal liberty of such spouse and may free such spouse's real and personal property from possession, control or any interest of the other spouse; and during the pendency of the action the court shall have the same powers to make such orders as are provided for actions for divorce by section thirteen of this article insofar as the same are applicable on behalf of either spouse. Any order entered in the case shall be effective during such time as the court shall by its order direct, or until the further order of the court thereon, and upon the petition of either party, the court may, from time to time afterwards, revise or alter such order, or make further orders, concerning the maintenance of either spouse and the interest of one spouse in the property of the other spouse, and the care, custody, education and maintenance of the minor children of the parties, and may determine with which of their parents the children or any of them shall remain.
CHAPTER 78
(Com. Sub. for H. B. 802—By Mrs. Hartman)

[Passed April 4, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the prevention of domestic violence and requiring law-enforcement agencies to maintain records on all incidents of family or household abuse reported to them and to make reports to department of public safety; contents of reports; identification of abused or abusing party not permitted; providing for compilation and dissemination with certain limitations, by the department of data derived from such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.


1 (a) Each law-enforcement agency shall maintain records on all incidents of family or household abuse reported to it, and shall monthly make and deliver to the department of public safety a report on a form prescribed by the department, listing all such incidents of family or household abuse. Such reports shall include:

7 (1) The age and sex of the abused and abusing parties;
8 (2) The relationship between the parties;
9 (3) The type and extent of abuse;
10 (4) The number and type of weapons involved;
11 (5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the
time lapse between the agency's action and the abused's request for assistance;

(6) Whether the complaining party reported having filed complaints with regard to family or household abuse on any prior occasion and if so, the number of such prior complaints;

(7) The effective dates and terms of any order of protection issued prior to or following the incident to protect the abused party: Provided, That no information which will permit the identification of the parties involved in any incident of abuse shall be included in such report.

(b) The department of public safety shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section, and publish a statistical compilation in the department's annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code.

(c) The statistical compilation shall include, but is not limited to, the following:

(1) The number of family violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;

(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of orders of protection.

(d) As used in this section, the terms "abuse" and "family or household members" shall have the meanings given them in
section two, article two-a, chapter forty-eight of this code; and the term "law-enforcement agency" shall include the West Virginia department of welfare in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(e) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: Provided, That nothing in this section shall prohibit the department of public safety from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

CHAPTER 79

(Com. Sub. for S. B. 317—By Mr. Boettner)

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

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to the enforcement procedure for temporary and protective orders of a court to protect against abuse; arrest for violation of such orders; contempt proceedings; and limiting the remedies to certain violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-10. Enforcement procedure for temporary and protective order.

1 (1) Upon issuance of a temporary order as provided in
section five of this article, and service thereof upon the
defendant, or under relief granted in a protective order as
provided in subsections (a) and (b), section six of this article
of which the defendant has notice, a copy of such order shall,
no later than the close of the next business day, be delivered
to a local office of the city police, the county sheriff, and the
West Virginia department of public safety, where it shall be
placed in a confidential file, with access provided only to the
law-enforcement agency and the respondent named on said
order: Provided, That upon the expiration of any order issued
pursuant to section five or six of this article, any such
law-enforcement agency which has any such order on file,
shall immediately expunge its confidential file of any
reference thereto and destroy all copies of such order in its
possession, custody or control. A sworn affidavit may be
executed by the party awarded exclusive possession of the
residence or household, pursuant to an order entered under
subsection (b), section six of this article, and delivered to such
law-enforcement agency simultaneously with any such order,
giving his consent for a law-enforcement officer to enter such
residence or household, without a warrant, to enforce such
protective order or temporary order.

Any person who observes a violation of such order or the
violated party may call a local law-enforcement agency,
which shall verify the existence of a current order, and shall
direct a law-enforcement officer to immediately investigate
the alleged violation.

Where a law-enforcement officer observes a violation of a
valid order he may immediately arrest the subject of the
order. In cases of violation of such orders occurring outside
the presence of the investigating officer, the complainant may
apply to a court in session for a warrant of arrest. If the court
finds probable cause to believe that a valid order has been
violated, the court shall issue such warrant for the arrest of
the subject of the order wherever he may be found.

Where there is an arrest, the officer shall take the arrested
person before a court or the magistrate assigned to be
available at such time and upon a finding of probable cause to
believe a violation of an order has taken place, the court or
magistrate shall set a time and place for a hearing, to take
place within five days, and serve forthwith upon the alleged
violator an order to show cause why he or she should not be
held in contempt for violation of the prior order, which unless
waived by the defendant shall be by trial by a jury of six
persons. The remedies provided by this section shall be
limited to violations of a temporary order or protective order
entered pursuant to subsection (a) or (b), section six of this
article.

CHAPTER 80
(H. B. 1605—By Mr. Hatcher)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adoptions; the contents of a petition for adoption; requirement of verification; requiring specific finding when person petitioning for adoption is less than fifteen years older than child and providing an exception to such requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ADOPTION.

§48-4-2. Contents of petition; age of petitioner.

Such petition shall set forth the name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known; whether such child be possessed of any property, and a full description of the same, if any; whether such child has either father or mother, or both, and if he, she or they are alive, then the name or names, and place of residence of such father or mother, or if such be the fact, that the same are unknown to the petitioner
or petitioners. The petition shall be duly verified according to law.

When the person petitioning for adoption is less than fifteen years older than the child sought to be adopted, such fact shall be set forth specifically in the petition. In such case, the court shall grant the adoption only upon a specific finding that notwithstanding the nearness in age of the petitioner and child, such adoption is in the best interests of the child: Provided, that when the petitioner seeks to adopt a child of his or her spouse, such specific finding shall not be required and an adoption shall not be denied on the sole basis of proximity in age.

CHAPTER 81

(S. B. 335—By Mr. McGraw, Mr. President)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority, providing for certain legislative findings and purposes with respect thereto; the definition of terms used; composition of such authority and providing for the appointment of the members thereof and their respective terms; permitting certain members of the authority to designate the person to act in their stead; rules with respect to voting by such members; the compensation and expenses of such members; establishing the general powers of the authority; permitting the authority to make certain loans to industrial development agencies for industrial development projects and industrial subdivision projects, acquisitions and improvements; establishing certain requirements with certain loan applications and for hearings thereon; providing for equipment loans and security interests incidental to loans; establishing the economic development fund; permitting the authority to borrow money; providing that the notes, security interests and bonds of the authority are general obligations of the authority but not of the state; providing that such notes,
security interests and bonds are negotiable instruments; providing for the redemption of such notes, security interests or bonds; providing a disclaimer of any liability of the state of West Virginia with respect thereto; creating a trust for the holders of such notes, security interests and bonds issued by the authority; providing for certain rules with respect to defalcation by the authority in the payment of principal or interest upon any note, security interest or bond issued by the authority; authorizing certain governmental agency, banks and other financial institutions to invest in the notes, security interests and bonds issued by the authority and providing certain limits with respect thereto; extending tax exemption status to such notes, security interests and bonds issued by such authority and providing certain exemptions with respect thereto; placing certain limits upon the authority with respect to its borrowing powers; providing for the validity of any pledge contained in any mortgage, deed of trust or security interest for the benefit of the authority; establishing a governing body for the authority and providing for its powers; establishing certain rules with respect to the meetings, organizations and for quorum of such governing body; providing for deposit into the state treasury of all moneys received by the authority and for crediting such money to the economic development fund; providing for certain rules with respect to agreements entered into by various state agencies with the federal government and its agencies; voiding certain contracts or agreements approved by the board where conflicts of interest exist with respect to any member of such board; establishing rules for the auditing of the accounts, books and records of the authority; and providing certain rules of construction with respect to the provisions of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.
§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.


§31-15-7. Loans to industrial development agencies for industrial development projects.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.

§31-15-8. Loan application requirements; hearings.


§31-15-12. Notes, security interests and bonds as general obligations of authority.


§31-15-17. Trust existing in favor of existing holders of notes, security interests or bonds.

§31-15-18. Default in payment of principal or interest.


§31-15-23. Governing body; organization and meetings; quorum; powers.


§31-15-25. Conflict of interest; when contracts void.

§31-15-26. Agreement with federal agencies not to alter or limit powers of authority.


This article shall be known and may be cited as "The West Virginia Economic Development Authority Act."

§31-15-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding: (a) That unemployment exists in many areas of the state and may well come about, from time to time, in other areas of the state; (b) that in some areas of the state, unemployment is a serious problem and has been for so long a period of time that, without remedial measures, it may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all
unemployed workers and ultimately upon the state in the 
form of welfare and unemployment compensation; (e) that 
the absence of employment and business opportunities for 
... 
... their faith in our American political and economic 
institutions and the philosophy of freedom on which those 
institutions are based; (f) that lack of employment and 
business opportunities has resulted in thousands of workers 
and their families leaving the state to find such opportunities 
elsewhere, and that this exodus has adversely affected the tax 
base of counties and municipalities resulting in an 
impairment of their financial ability to support education and 
other local government services; (g) that security against 
unemployment and the spread of indigency and economic 
stagnation can best be provided by the promotion, attraction, 
stimulation, rehabilitation and revitalization of commerce, 
tourism, industry and manufacturing; (h) that the present and 
future health, safety, morals, right to gainful employment and 
general welfare of the people of the state require as a public 
purpose the promotion and development of new and 
expanded coal production, industrial, commercial, tourist 
and manufacturing enterprises within this state; (i) that the 
device under which private community industrial 
development organizations in the state acquire or build 
industrial buildings or sites and equip the same with funds 
rised through popular subscription, loans or otherwise for 
lease and sale to new or expanding industries has proven 
effective in creating new employment and business 
opportunities locally, is in accord with the American tradition 
of community initiative and enterprise, and requires and 
deserves encouragement and support from the state, as a 
means toward alleviation of unemployment and economic 
distress; (j) that community industrial development 
corporations in the state have invested substantial funds in 
successful coal production, industrial development projects 
and are experiencing difficulty in undertaking additional 
projects by reason of the partial inadequacy of their own 
funds potentially available from local subscription sources 
and by reason of limitations of local financial institutions in 
providing additional and sufficiently sizeable first deed of 
trust or mortgage loans; (k) that an urgent need exists to 
stimulate a larger flow of private investment funds from
banks, investment houses, insurance companies and other
financial institutions into community industrial building
programs; (l) that by increasing the number of community
industrial building projects presenting attractive
opportunities for private investment, a larger portion of the
private capital available in this state for investment can be
put to use for the general economic development of the state;
and (m) that it is in the public interest, in order to address the
needs aforesaid, that a state instrumentality be created as a
public body corporate with full powers to accept grants, gifts
and appropriations, to generate revenues, to borrow money
and issue its bonds, notes and security interests to the end
that funds obtained thereby may be used to furnish money
and credit to approved industrial development agencies.


1 The purposes of this article shall be to provide for the
formation of a public economic development authority to
promote, assist, encourage and, in conjunction with such
banking corporations or institutions, trust companies,
savings banks, building and loan associations, insurance
companies or related corporations, partnerships, foundations
or other institutions to develop and advance the business
prosperity and economic welfare of the state of West Virginia;
to encourage and assist in the location of new business and
industry; to stimulate and assist in the expansion of all kinds
of business activity which will tend to promote the business
development and maintain the economic stability of this
state, provide maximum opportunities for employment,
encourage thrift and improve the standard of living of the
citizens of this state; to cooperate and act in conjunction with
other organizations, public or private, the objects of which are
the promotion and advancement of industrial, commercial,
tourist or manufacturing developments in this state; to
borrow moneys and to issue its bonds, notes and security
interests; to furnish money and credit to approved industrial
development agencies in this state, thereby establishing a
source of credit not otherwise available therefor. Such
purposes are hereby declared to be public purposes for which
public money may be spent and are purposes which will
promote the health, safety, morals, right to gainful
employment, business opportunities and general welfare of
the inhabitants of the state.

1 Unless the context clearly indicates otherwise, as used in this article:

3 (a) "Authority" means the West Virginia economic development authority.

5 (b) "Board" means the governing body of the authority.

7 (c) "Bonds" means bonds of the authority issued under this article.

9 (d) "Cost of establishing an industrial development project" means the cost of equipment or the cost of construction, cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction, cost of engineering and legal services, plans, specifications and surveys, estimates of costs and any other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation.

11 (e) "Cost of industrial subdivision project improvements" means equipment or construction cost of site preparation, cost of grading and planting, construction cost of utilities, sewage disposal facilities, storm drains, access roads and dock facilities, construction cost of internal streets and roads, curbs, walks, parking areas, lighting, shell buildings and rail spurs, cost of acquiring easements and property rights in other lands and, in connection therewith, financing charges, interest prior to and during the construction of such improvements, cost of engineering and legal services, preparation of plans, specifications, surveys and estimates of costs, together with such other expenses as may be necessary or incidental to the financing and construction of industrial subdivision project improvements.

19 (f) "County" means any county of this state.

21 (g) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America.
(h) "Fund” means the economic development fund provided for in section ten of this article.

(i) “Government” means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise.

(j) “Industrial development agency” means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist facility enterprises in this state.

(k) “Industrial development project” means any land or water site, structure, facility, equipment or undertaking comprising or being connected with or a part of an industrial, commercial, manufacturing or tourist facility enterprise established, to be established or proposed to be acquired by an industrial development agency in this state.

(l) “Industrial subdivision project” means any tract of land or area of water and includes, where appropriate, related utilities, services and access roads, the clear and marketable legal title to which is held or is proposed to be acquired by an industrial development agency for sale or lease for an industrial development project.

(m) “Industrial subdivision project improvements” means site preparation, grading, planting and the installation of utilities, sewage disposal facilities, storm drains, dock facilities, internal streets and roads, curbs, walks, parking areas, lighting, shell buildings, equipment and rail spurs upon an industrial subdivision project.

(n) “Municipality” means any city or town in this state.

(o) “Notes” means any notes of the authority issued under this article.

(p) “Responsible buyer” means government and any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all obligations prescribed by it in the acquisition of an industrial development project from an industrial development agency
and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.

(q) "Responsible tenant" means government and any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all rental and other obligations prescribed by it in the leasing of an industrial development project and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.

(r) "Revenues" means all fees, charges, moneys, profits, payments or principal of, or interest on, loans and other investments, gifts, grants, appropriations, contributions and all other income derived or to be derived by the authority under this article.

(s) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.

The West Virginia industrial development authority heretofore created is hereby continued as a body corporate and politic, constituting a public corporation and government instrumentality, but shall hereafter be known as the West Virginia economic development authority.

The authority shall be composed of a board of members consisting of a chairman, who shall be the governor or his designated representative, the state treasurer, the tax commissioner, the commissioner of banking and five appointed members who shall be broadly representative of the geographic regions of the state.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint five members of the commission for staggered terms of four years. Of the members of the commission first appointed, one shall be appointed for a term ending the thirtieth day of June, one
thousand nine hundred seventy-eight, and one each for terms
ending one, two, three and four years thereafter: Provided,
That each person serving as a member of the West Virginia
industrial development authority, for a term which has not
expired on the effective date of this article, shall be appointed
by the governor without Senate confirmation to the West
Virginia economic development authority as one of the five
appointed members, for the term ending the thirtieth day of
June in the year in which his term would expire as a member
of the West Virginia industrial development authority. As
these original appointments expire, each subsequent
appointment shall be for a full four-year term. Any member
whose term has expired shall serve until his successor has
been duly appointed and qualified. Any person appointed to
fill a vacancy shall serve only for the unexpired term. Any
member shall be eligible for reappointment.

The governor, state treasurer, tax commissioner and
commissioner of banking may, by written notice filed with
the secretary of the authority, from time to time, delegate to
any subordinate the power to represent them at any meeting
of the authority. In such case, the subordinate shall have the
same power and privileges as the official he represents and
may vote on any question.

Members of the authority shall not be entitled to
compensation for services performed as members, but shall
be entitled to reimbursement for all reasonable and necessary
expenses actually incurred in the performance of their duties.


The authority, as a public corporation and governmental
instrumentality exercising public powers of the state, shall
have and may exercise all powers necessary or appropriate to
carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in
efforts to promote the expansion of industrial, commercial,
manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an
industrial development agency, whether the declared public
purposes of this article have been or will be accomplished by
the establishment by such agency of an industrial
development project in this state.
(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any industrial development project.

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

(g) To make, upon proper application of any industrial development agency, loans to such agency for industrial development projects, industrial subdivision projects and industrial subdivision project improvements and to provide for the repayment and redeposit of such loans in the manner provided in this article.

(h) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(i) To adopt, use and alter at will a corporate seal.

(j) To make bylaws for the management and regulation of its affairs.

(k) To appoint officers, agents, employees and servants.

(l) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business.

(m) Without in any way limiting any other subdivision of this section, to accept grants from and enter into contracts and other transactions with any federal agency.

(n) To take title by foreclosure to any industrial
development project or any industrial subdivision project
where acquisition is necessary to protect any loan previously
made by the authority and to sell, transfer and convey such
project to any responsible buyer. In the event such sale,
transfer and conveyance cannot be effected with reasonable
promptness, the authority may, in order to minimize financial
losses and sustain employment, lease the project to a
responsible tenant. The authority shall not lease an industrial
development project or industrial subdivision project, except
under the conditions and for the purposes cited in this
section.

(o) To participate in any reorganization proceeding
pending pursuant to the United States Code (being the act of
Congress establishing a uniform system of bankruptcy
throughout the United States, as amended) or in any
receivership proceeding in a state or federal court for the
reorganization or liquidation of a responsible buyer or
responsible tenant. The authority may file its claim against
any such responsible buyer or responsible tenant in any of
the foregoing proceedings, vote upon any question pending
therein which requires the approval of the creditors
participating in any reorganization proceeding or
receivership, exchange any evidence of such indebtedness
for any property, security or evidence of indebtedness offered
as a part of the reorganization of such responsible buyer or
responsible tenant or of any other entity formed to acquire
the assets thereof and may compromise or reduce the
amount of any indebtedness owing to it as a part of any such
reorganization.

(p) To borrow money and to issue its negotiable bonds,
security interests or notes and to provide for and secure the
payment thereof, and to provide for the rights of the holders
thereof, and to purchase, hold and dispose of any of its bonds,
security interests or notes.

(q) To sell, at public or private sale, any bond or other
negotiable instrument, security interests or obligation of the
authority in such manner and upon such terms as the
authority deems would best serve the purposes of this article.

(r) To issue its bonds, security interests and notes payable
solely from the revenues or funds available to the authority
therefor; and the authority may issue its bonds, security
interests or notes in such principal amounts as it shall deem
necessary to provide funds for any purposes under this
article, including:

(i) The making of loans to approved industrial
development agencies.

(ii) The payment, funding or refunding of the principal of,
interest on, or redemption premiums on, any bonds, security
interests or notes issued by it whether the bonds, security
interests, notes or interest to be funded or refunded have or
have not become due.

(iii) The establishment or increase of reserves to secure or
to pay bonds, security interests, notes or the interest thereon
and all other costs or expenses of the authority incident to
and necessary or convenient to carry out its corporate
purposes and powers. Any bonds, security interests or notes
may be additionally secured by a pledge of any revenues,
funds, assets or moneys of the authority from any source
whatsoever.

(s) To issue renewal notes, or security interests, to issue
bonds to pay notes or security interests and, whenever it
deems refunding expedient, to refund any bonds by the
issuance of new bonds, whether the bonds to be refunded
have or have not matured except that no such renewal notes
shall be issued to mature more than ten years from date of
issuance of the notes renewed and no such refunding bonds
shall be issued to mature more than twenty-five years from
the date of issuance.

(t) To apply the proceeds from the sale of renewal notes,
security interests or refunding bonds to the purchase,
redemption or payment of the notes, security interests or
bonds to be refunded.

(u) To accept gifts or grants of property, funds, security
interests, money, materials, labor, supplies or services from
the United States of America or from any governmental unit
or any person, firm or corporation, and to carry out the terms
or provisions of, or make agreements with respect to, or
pledge, any gifts or grants, and to do any and all things
necessary, useful, desirable or convenient in connection with
the procuring, acceptance or disposition of gifts or grants.
(v) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(w) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be used in the same manner and for the same purposes as bond and note revenues.

(x) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(y) To take and hold security interests for equipment loans as prescribed in this article.

§31-15-7. Loans to industrial development agencies for industrial development projects.

When it has determined upon application of an industrial development agency and upon hearing in the manner hereinafter provided that the establishment or acquisition of a particular industrial development project has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such agency an amount not in excess of fifty percent of the cost or estimated cost of such project, as established, to be established or proposed to be acquired, subject to the following conditions:

(a) Industrial development projects to be established or acquired.

(1) The authority shall have first determined that the industrial development agency holds funds in an amount equal to or property of a value equal to not less than ten percent of the estimated cost of establishing or acquiring the industrial development project, which funds or property are available for and shall be applied to the establishment or acquisition of the project.

(2) The authority shall have also determined that the
industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies, a firm commitment for all other funds over and above the loan of the authority and such funds or property as the agency may hold, necessary for payment of all the estimated cost of establishing or acquiring the industrial development project and that the sum of all these funds is adequate to ensure completion and operation of the industrial development project.

(b) Industrial development projects established or acquired with initial authority loan participation.

(1) The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than ten percent of the cost of establishing or acquiring the industrial development project.

(2) The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies, other funds necessary for payment of all the cost of establishing or acquiring the industrial development project and that the industrial development agency participation and these funds have been adequate to ensure completion and operation or acquisition of the industrial development project. The proceeds of any loan made by the authority to the industrial development agency pursuant to this subdivision (b) shall be used only for the establishment or acquisition of industrial development projects in furtherance of the public purposes of this article.

The loan of the authority shall be for such period of time and shall bear interest at such rate as the authority determines and it shall be secured by the negotiable promissory note of the industrial development agency and by deed of trust on the industrial development project for which the loan was made or by assignment of any deed of trust and negotiable promissory note and other security taken by the industrial development agency on the industrial development project, such deed of trust and note, assignment of deed of trust, and note and other security to be second and subordinate only to the deed of trust securing the first lien.
obligation issued to secure the commitment of funds from the independent and responsible sources and used in the financing of the industrial development project.

Money loaned by the authority to an industrial development agency shall be withdrawn from the fund and paid over to the agency in such manner as is provided by rules and regulations of the authority.

The authority shall deposit all payments of interest on loans and the principal thereof in the fund. When any federal agency participates, the authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds and the authority in such manner as to ensure the maximum benefit available to the industrial development agency, the authority, or both, by the participation of the federal agency. When ratios are adjusted as aforesaid, no such adjustment shall be made which shall cause the authority to grant a loan to the industrial development agency in excess of fifty percent of the cost or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust or assignment of deed of trust and other security the lien of which is junior to the deed of trust or assignment of deed of trust and other security of the authority, the authority may take as security for its loan to the industrial development agency a deed of trust or assignment of deed of trust and other security junior in lien to that of the federal agency.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.

When it has been determined upon application of an industrial development agency and upon hearing in the manner hereinafter provided that the acquisition or improvement of a particular industrial subdivision project by such agency will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency an amount not in excess of fifty percent of the cost or estimated cost of such industrial subdivision
(1) The authority shall have determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies, a firm commitment for all other funds, over and above the loan of the authority, necessary for payment of all the estimated cost of the industrial subdivision project acquisition or improvement and that the sum of all these funds is adequate to ensure completion of the project acquisition or improvement.

(2) The authority shall have also determined that the industrial development agency has or proposes to acquire clear and marketable legal title to the industrial subdivision project to be improved or acquired.

(3) The industrial development agency shall convenant in writing with the authority that, as long as any loan made by the authority to the agency for the acquisition or improvement of any industrial subdivision project remains unpaid, no portion of such industrial subdivision project shall be sold, leased or otherwise encumbered except for the purpose of establishing an industrial development project on such land by the agency.

(4) In the case of a contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, the industrial development agency shall furnish to the authority evidence that such industrial development agency has entered into a contract whereby a responsible buyer or responsible tenant is legally obligated to acquire or lease such shell building. The Legislature finds and declares that it does not believe it would be in the best interest of the state for the authority to contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, unless it is clear that the use to be made of such shell building will result in the employment of a reasonably substantial work force.

The loan of the authority shall be for such period of time
and shall bear interest at such rate as the authority
determines and it shall be secured by the negotiable
promissory note of the industrial development agency and by
deed of trust on the industrial subdivision project for which
the loan was made, such deed of trust to be second and
subordinate only to the deed of trust securing the first lien
obligation issued to secure the commitment of funds from the
independent and responsible sources and used in the
financing of the industrial subdivision project acquisition or
improvement.

The authority may, in its discretion, defer the payment of
principal and interest, or principal only, or interest only, upon
any loan made to an industrial development agency for any
industrial subdivision project acquisition or improvement,
such deferment to be for such period as the authority
determines, not to exceed five years from the date of the deed
of trust securing the loan. If any portion of such industrial
subdivision project is sold or leased by the agency prior to the
expiration of the five-year period, all deferred installments of
the principal of the loan accrued on the date of such sale or
lease, or the proportionate part of such deferred principal
which the sold or leased portion of the project bears to its
total acreage, together with all unpaid interest accrued on the
date of such sale or lease, shall, at the option of the authority,
become due and payable immediately or subject to
renegotiation by either increasing or decreasing the number
and amount of each installment of principal and interest,
without effecting any change in the amount of principal of the
original loan or the rate of interest as originally fixed by the
authority in the deed of trust and note.

Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.

The authority shall deposit all payments of interest on any
loans and the principal thereof in the fund.

Where any federal agency participating in the financing of
industrial subdivision project acquisition or improvement is
not permitted to take as security for such participation a deed
of trust or assignment of deed of trust and other security the
lien of which is junior to the deed of trust or assignment of
deed of trust and other security of the authority, the authority
may take as security for its loan to the industrial development
agency a deed of trust or assignment of deed of trust and
other security junior in lien to that of the federal agency.

§31-15-8. Loan application requirements; hearings.

Prior to the loaning of any funds to an industrial
development agency for an industrial development project or
for an industrial subdivision project acquisition or
improvement, the authority shall receive from such agency a
loan application in such form as adopted by the authority.

(1) If the loan application is for an industrial development
project, the form shall contain at least the following:

(a) A general description of the project and a general
description of the industrial, commercial, manufacturing or
tourist enterprise for which the project has been or will be
established.

(b) A legally sufficient description of all real estate
necessary for the project.

(c) Such plans and other documents as may be required to
show the type, structure and general character of the project.

(d) A general description of the type, classes and number
of employees employed or to be employed in the operation of
the project.

(e) Cost or estimates of cost of establishing the project.

(f) A general description and statement of value of any
property, real or personal of the industrial development
agency applied or to be applied to the establishment of the
project.

(g) A statement of cash funds previously applied, or held
by the industrial development agency, which are available for
and are to be applied to the establishment of the project.

(h) Evidence of the arrangement made by the industrial
development agency for the financing of all cost of the project
over and above its own participation.

(i) A general description of the responsible tenant to
which the industrial development agency has leased or will lease the project or of the responsible buyer to which the agency has sold or will sell the project.

(j) A general description of the form of lease or sales agreement entered into or to be entered into between the industrial development agency and its responsible tenant or responsible buyer.

(k) Evidence that the establishment of the project will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.

(2) If the loan application is for an industrial subdivision project acquisition or improvement, the form shall contain at least the following:

(a) A general description of the industrial subdivision project and a general description of its adaptability to industrial, commercial, manufacturing or tourist purposes, including the type of industrial development project which may be established thereon upon completion of the acquisition or improvement for which the loan is requested.

(b) A legally sufficient description of the industrial subdivision project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the proposed industrial subdivision project acquisition or improvement.

(d) Cost or estimates of cost of the proposed industrial subdivision project acquisition or improvement.

(e) Evidence of the arrangement made by the industrial development agency for the financing of all cost of the industrial subdivision project acquisition or improvement over and above its own participation.

(f) Evidence that the establishment of the project to be acquired or improved will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.

The board of the authority shall hold such hearings and
examinations on each loan application as shall be necessary
to determine whether the public purposes of this article will
be accomplished by the granting of such loan.

When the board determines that a loan will accomplish the
public purposes of this article, it shall grant such loan in
accordance with the provisions of this article.


The authority may make loans for equipment as part of
industrial development projects or industrial subdivision
projects or improvement thereto subject to the same
application and loan procedures and limitations as usually
apply to loans for industrial development projects or
industrial subdivision projects or improvements thereto:
Provided, That such loans shall be secured by a first lien on
the equipment financed by the loan and shall be additionally
secured by a deed of trust in real property and any
improvement thereto; such additional security shall be upon
such terms and in such amount satisfactory to the authority.


The industrial development fund, to which shall be
credited any appropriation made by the Legislature to the
authority and such other deposits as are provided for in this
section, is hereby continued in the state treasury as a special
account, but shall hereafter be known as the economic
development fund.

The authority shall requisition from the fund such amounts
as are necessary to provide for the payment of the
administrative expenses of this article. Notwithstanding
section seven-a of this article, whenever the authority
determines it to be necessary to purchase at a foreclosure sale
any industrial development project or industrial subdivision
project pursuant to subdivision (o), section six of this article,
it may requisition from the fund such amount as is necessary
to pay the purchase price thereof, notwithstanding that the
purchase price in the foreclosure sale of any industrial
development project may exceed fifty percent of the original
cost of the project, or that in the foreclosure sale of any
industrial subdivision project the purchase price may exceed
fifty percent of the original cost of the project or
improvement thereon.
The authority shall requisition from the fund such amounts as are allocated and appropriated for loans to industrial development agencies for industrial development projects, industrial subdivision projects and industrial subdivision project acquisitions or improvements. As loans to industrial development agencies are repaid to the authority pursuant to the terms of mortgages and other agreements, the authority shall pay such amounts into the fund, consistent with the intent of this article that the fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied for the purposes of this article. Revenues deposited into the fund may be used to make payments of interest and principal and may be pledged as security for bonds, security interests or notes issued by the authority pursuant to this article.

Whenever the authority determines that the balance in the fund is in excess of the immediate requirements for loans, it may request that such excess be invested until needed for loan purposes, in which case such excess shall be invested in a manner consistent with the investment of other temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.


The borrowing of money and the notes, bonds and security interests evidencing any such borrowing shall be authorized by resolution approved by the board, shall bear such date or dates, and shall mature at such time or times, in the case of any such bonds, not exceeding twenty-five years from the date of issue, as such resolution or resolutions may provide. The notes, bonds and security interests shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or conditions of redemption as such resolution or resolutions may provide.
§31-15-12. Notes, security interests and bonds as general obligations of authority.

1 Except as may otherwise be provided by the authority, every issue of its notes, security interests and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes, security interests or bonds pledging any particular revenues.


1 The notes, security interests and bonds issued by the authority shall be and hereby are made negotiable instruments under the provisions of article eight, chapter forty-six of this code, subject only to the provisions of the notes, security interests or bonds for registration.


1 Any resolution or resolutions authorizing any notes, bonds or security interests or any issue thereof, may contain provisions, which shall be a part of the contract with holders, as to:

5 (1) Pledging all or part of the revenues of the authority to secure the payment of the notes, security interests or bonds or any issue thereof, subject to such agreements with bondholders, holders of security interests or noteholders as may then exist;

10 (2) Pledging all or any part of the assets of the authority to secure the payment of the notes, security interests or bonds or any issue thereof, subject to such agreements with bondholders, holders of security interests or note holders as may then exist;

15 (3) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

17 (4) Limitations on the purposes to which the proceeds of sale of notes, security interests or bonds may be applied and pledging such proceeds to secure the payment of the notes, security interests or bonds or of any issue thereof;

21 (5) Limitations on the issuance of additional notes,
security interests or bonds; the terms upon which additional
notes, security interests or bonds may be issued and secured;
and the refunding of outstanding or other notes, security
interests or bonds;

(6) The procedure, if any, by which the terms of any
contract with noteholders, holders of security interests or
bondholders may be amended or abrogated, the amount of
notes, security interests or bonds the holders of which must
consent thereto, and the manner in which such consent may
be given;

(7) Limitations on the amount of moneys to be expended
by the authority for operating, administrative or other
expenses of the authority;

(8) Vesting in a trustee or trustees the property, rights,
powers and duties of a trustee appointed by the bondholders
pursuant to section eighteen of this article, and limiting or
abrogating the right of the bondholders to appoint a trustee
under section eighteen of this article or limiting the rights,
powers and duties of such trustees; and

(9) Any other matters, of like or different character, which
in any way affect the security or protection of the notes,
security interests or bonds.


1 The authority, subject to such agreements with
noteholders, holders of security interests or bondholders as
may then exist, shall have power, out of any funds available
therefor, to purchase notes, security interests or bonds of the
authority.

6 If the notes, security interests or bonds are then
redeemable, the price of such purchase shall not exceed the
redemption price then applicable plus accrued interest to the
next interest payment date thereon. If the notes, security
interests or bonds are not then redeemable, the price of such
purchase shall not exceed the redemption price applicable on
the first date after such purchase upon which the notes,
security interests or bonds become subject to redemption
plus accrued interest to such date. Upon such purchase such
notes, security interests or bonds shall be canceled.

The state of West Virginia shall not be liable on notes, security interests or bonds or other evidences of indebtedness of the authority and such notes, security interests or bonds or other evidence of indebtedness shall not be a debt of the state of West Virginia, and such notes, security interests or bonds or other evidence of indebtedness shall contain on the face thereof a statement to such effect.

§31-15-17. Trust existing in favor of existing holders of notes, security interests or bonds.

The properties and interests in properties, real, personal and mixed, tangible and intangible, standing or held in the name of or for and in behalf of, or for the benefit of, the authority, or the state of West Virginia to the extent that the same are or were acquired or improved by the expenditure of the proceeds of notes, security interests or bonds heretofore or hereafter issued by the authority, and the moneys, deposits, securities and choses in action and other rights held in the name of or for and in behalf of, or for the benefit of, the authority, other than moneys, deposits, securities, choses in action and other rights which are, or which are investments of, (1) proceeds of bonds heretofore issued by the authority held for expenditure for completion of now existing projects of the authority, or (2) revenues of the authority from existing projects of the authority which, after provision for operation and maintenance expenses and coverage requirements not otherwise provided for, are in excess of sums required to pay the principal of and interest on the bonds of the commission heretofore issued, as and when due and payable, or (3) proceeds of bonds of the authority issued hereafter, or (4) revenues of the authority from projects hereafter financed by or participated in by the authority, are declared to be subject to and shall be held by the authority in trust for the satisfaction of the obligations evidenced by the bonds heretofore issued by the authority and the interest coupons thereon: Provided, That nothing in this article shall be taken to validate or to attempt to validate any agreement which provides for payments from general tax revenues of the state. Until the satisfaction in full of the obligations evidenced by bonds heretofore issued by the authority, the authority shall hold, manage and operate the aforesaid trust properties and
interests in properties, moneys, deposits, securities and choses in action and other rights, separate from all other properties and interests in properties, moneys, deposits, securities and choses in action and other rights that may hereafter be held and owned by the authority. Upon the satisfaction of all of the aforesaid obligations of the authority, all of the aforesaid trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights shall become and be free and clear of the aforesaid trust.

§31-15-18. Default in payment of principal or interest.

In the event the authority shall default in the payment of principal of or interest on any issue of its notes, security interests or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event the authority shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of any issue of notes, security interests or bonds, the holders of twenty-five percent in aggregate principal amount of the notes, security interests or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county commission of any county in which the authority operates and has an office and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes, security interests or bonds for the purposes herein provided:

(1) Any such trustee, upon the written request of the holders of twenty-five percent in principal amount of such notes, security interests or bonds of the authority then outstanding, shall, in his or its own name, do any one or more of the following:

(i) By civil action or other proceeding, enforce all rights of the noteholders, holders of security interests or bondholders, including the right to require the authority to perform its duties under this article;

(ii) Bring a civil action upon such notes, security interests or bonds;

(iii) By civil action or other proceeding, require the
authority to account as if it were the trustee of an express
trust for the holders of such notes, security interests or bonds;
(iv) By civil action or other proceeding, enjoin any acts or
things which may be unlawful or in violation of the rights of
the holders of such notes, security interests or bonds;
(v) Declare all such notes, security interests or bonds due
and payable, and if all defaults shall be made good, then
annul such declaration and its consequences.
(2) In addition to the foregoing, such trustee shall have
and possess all of the powers necessary or appropriate for the
exercise of any functions specifically set forth herein or
incident to the general representation of holders of notes,
security interests or bonds of the authority in the
enforcement and protection of their rights.
(3) Before declaring the principal of any notes, security
interests or bonds due and payable, the trustee shall first give
thirty days' notice in writing to the authority.
The notes, bonds and security interests of the authority are
hereby made securities in which the state board of
investments, all insurance companies and associations, and
other persons carrying on an insurance business, all banking
institutions, trust companies, building and loan associations,
savings and loan associations, investment companies and
other persons carrying on a banking business, and other
persons, except administrators, guardians, executors,
trustees and fiduciaries, who are now or who may hereafter
be authorized to invest in bonds or other obligations of the
state, may properly and legally invest funds including capital
in their control or belonging to them: Provided, That the state
board of investments, prior to investing funds, including
capital in such notes, security interests or bonds of the
authority shall first inquire fully into the integrity and
sufficiency of the collateral securing such investment and
shall be fully satisfied as to the sufficiency and integrity
thereof; and may only so invest if the yield therefrom is at
least equal to or greater than the prevailing market yield from
similar United States twenty-six week treasury bills:
Provided, however, That the state board of investments shall
not purchase evidences of indebtedness having terms in excess of eighteen months from date of purchase to date of maturity.


1 The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the operation and maintenance of economic development projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any economic development project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds and notes and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.


1 The aggregate principal amount of notes, security interests and bonds issued by the authority shall not exceed one hundred million dollars outstanding at any one time: Provided, That in computing the total amount of notes, security interests and bonds which may at any one time be outstanding, the principal amount of any outstanding notes, security interests and bonds refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds, security interests or notes of the authority or by exchange for any such refunding bonds, security interests or notes shall be excluded. The provisions of section nineteen of this article notwithstanding, the state board of investments shall have invested no more than a total aggregate principal amount of fifteen million dollars at any one time in such notes, security interests or bonds.


1 It is the intention hereof that any pledge, mortgage, deed of
trust or security instrument made by or for the benefit of the authority shall be valid and binding between the parties from the time the pledge, mortgage, deed of trust or security instrument is made; and that the moneys or property so pledged, encumbered, mortgaged or entrusted shall immediately be subject to the lien of such pledge, mortgage, deed of trust or security instrument without any physical delivery thereof or further act.

§31-15-23. Governing body; organization and meetings; quorum; powers.

The governing body of the authority shall consist of the members of the authority acting as a board, which shall exercise all the powers given to the authority in this article. The governor or his designated representative shall be chairman of the board and its chief executive officer. On the second Monday of July of each year, the board shall meet to elect a secretary and a treasurer from among its own members.

A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan application shall be made by majority vote of the full membership of the board.

The board shall manage the property and business of the authority and prescribe, amend and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

The governor shall provide staff services to the authority for administration of this article, including liaison between the authority and industrial development agencies and related organizations and between the authority and other state agencies whose facilities and services may be useful to the authority in its work. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

The authority shall employ an executive director and any other personnel it determines necessary, and may appoint its
own counsel and legal staff, and retain such temporary
engineering, financial and other consultants or technicians as
may be required for any special study or survey consistent
with the provisions of this article.


All money accruing to the authority from whatever source
derived, except legislative appropriations, shall be collected
and received by the treasurer of the authority, who shall pay it
into the state treasury in the manner required by section two,
article two, chapter twelve of this code, which shall be
credited to the fund.

§31-15-25. Conflict of interest; when contracts void.

No member, officer or employee of the authority shall
either directly or indirectly be a party to or interested in any
manner in any contract or agreement with the authority
whereby liability or indebtedness against or to the authority
is in any manner created. Any contract or agreement made in
violation of the provisions of this section shall be void and no
action thereon shall be maintained against the authority.

§31-15-26. Agreement with federal agencies not to alter or limit
powers of authority.

The state hereby pledges to and agrees with each federal
agency that, if such agency constructs or loans or contributes
any funds for the acquisition, construction, extension,
improvement or enlargement of any industrial development
project or industrial subdivision project or for industrial
subdivision project improvements, the state will not alter or
limit the rights and powers of the authority in any manner
which would be inconsistent with the due performance of any
agreement between the authority and such federal agency
and that the authority shall continue to have and exercise all
powers granted for carrying out the purposes of this article
for so long as necessary.


As soon as possible after the close of each fiscal year, the
authority shall make an annual report of its activities for the
preceding fiscal year to the governor and the Legislature.
Each such report shall set forth a complete operating and
financial statement covering the authority’s operations
during the preceding fiscal year. The authority shall cause an
audit of its books and accounts to be made at least once each
fiscal year by certified public accountants and the cost
thereof may be treated as a part of the cost of construction or
of operations of its projects.


The provisions of this article are remedial and shall be
liberally construed and applied so as to promote the purposes
set out in section three of this article.

CHAPTER 82
(Com. Sub. for H. B. 1050—By Mr. Stephens and Mr. Tompkins)

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

AN ACT to amend and reenact section six, article two, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend article five
of said chapter by adding thereto a new section, designated
section fifteen-a, all relating to providing the study of multi-
cultural education to certain prospective and existing school
personnel by the state board of education and county boards of
education.

Be it enacted by the Legislature of West Virginia:

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

Article
1. State Board of Education.
2. County Board of Education.
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

The education of teachers in the state shall be under the general direction and control of the state board of education, which shall, through the state superintendent of schools, exercise supervisory control over teacher preparation programs in all institutions of higher education, including student teaching in the public schools, in accordance with standards for program approval stated in writing by the board. Such standards shall include a provision for the study of multicultural education.

As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles.

To give prospective teachers the teaching experience needed to demonstrate competence, as a prerequisite to licensure, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include (1) the minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee adequacy of facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

Institutions of higher education approved for teacher preparation may cooperate with each other and with one or more county boards of education in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching or internship...
programs, instruction in methodology, seminar programs for
college students, first year teachers and supervising teachers.

Such institutions of higher education and participating county
boards of education may budget and expend funds for the
operation of such centers through payments to the appropriate
fiscal office of the county designated by mutual agreement of
participating county school boards and higher education in-
stitutions to serve as the administering agency of the center.

The provisions of this section shall not be construed to
require the discontinuation of an existing student teacher
training center or school which meets the standards of the
state board of education.

The state board of education shall make rules and regulations
for the accreditation, classification and standardization of all
schools in the state, except institutions of higher education,
and shall determine the minimum standards for the granting of
diplomas and other certificates of proficiency, except those
conferred or granted by institutions of higher education. No
institution of less than collegiate or university status may
grant any diploma or other certificate of proficiency on any
basis of work or merit below the minimum standards prescribed
by the state board of education. All institutions of higher
education approved for teacher preparation in the school
year of nineteen hundred sixty-two—sixty-three shall con-
tinue to hold that distinction so long as they measure up to
the minimum standards for teacher preparation. Nothing
contained herein shall infringe upon the rights granted to
any institution by charter given according to law previous to
the adoption of this code.

No charter or other instrument containing the right to
issue diplomas or other certificates of proficiency shall be
granted by the state of West Virginia to any institution or
other associations or organizations of less than collegiate
or university status within the state until the condition of
granting or issuing such diplomas or other certificates of
proficiency has first been approved in writing by the state
board of education.
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15a. Study of multicultural education for school personnel.

County boards of education shall annually provide a program, during at least one noninstructional day of the school term, for the study of multicultural education for all school personnel as defined in subsection (a), section one, article one, chapter eighteen-a of this code. The study provided shall be in compliance with regulations to be developed by the state board of education.

As used in this section, multicultural education means the study of the pluralistic nature of American society, including its values, institutions, organizations, groups, status positions and social roles.

CHAPTER 83

(S. B. 710-S—Originating in the Senate Committee on Education)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, seven and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to classification of school subjects into adoption groups and adoption schedules; request for textbook samples and bids; selection and publication of multiple list of textbooks; selection of textbooks by county boards; retail outlets, exchange privilege and use of supplementary books; requiring the approval and listing of textbooks by the state board of education; stating when changes in textbooks may be effected; rules and regulations by the state board of education.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five, seven and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2A. TEXTBOOK ADOPTION.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.
§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.
§18-2A-5. Selection by county boards.
§18-2A-7. Retail outlets; exchange privilege; use of supplementary books.
§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

On or before the first day of July, one thousand nine hundred seventy-two, the state board of education shall classify the elementary and secondary school subjects now required to be taught in the schools of our state into five adoption groups. The five adoption groups shall be grouped by related subject fields as nearly as possible.

The schedule for the periods of adoption shall be as follows:

(a) Adoptions in Group I shall be made in one thousand nine hundred seventy-three for a period of five years.

(b) Adoptions in Group II shall be made in one thousand nine hundred seventy-four for a period of five years.

(c) Adoptions in Group III shall be made in one thousand nine hundred seventy-five for a period of five years.

(d) Adoptions in Group IV shall be made in one thousand nine hundred seventy-six for a period of five years.

(e) Adoptions in Group V shall be made in one thousand nine hundred seventy-seven for a period of five years: Provided, That the adoption of secondary textbooks for Group V shall be made in one thousand nine hundred eighty-one and Groups I through IV respectively in each successive year.

Upon the expiration of the periods of adoption, as set out in the aforesaid adoption schedule, the period of adoption and contract of each adoption group in which textbooks for all the subjects are adopted shall be for a period of five years.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

Prior to each adoption year after the one thousand nine
hundred seventy-two adoption, and after the one thousand nine hundred eighty-one adoption of secondary textbooks, and not later than the first day of August, the state board by written request or otherwise shall ask the various publishers of textbooks in the United States to submit samples and prices on all textbooks required to be taught in the public elementary and secondary schools of the state for the current adoption period.

All bids or proposals shall be under seal, and each bidder shall deposit in the state treasury such sum of money as the state board may designate, such deposit to be not less than one thousand dollars, and not more than three thousand dollars; and such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as are herein required in case of acceptance of all or part of his bid, and otherwise shall be returned to such bidder after the contract has been made.

All bids shall be opened by the state board in public session. After considering the subject matter, printing, binding, general suitableness, and prices of books submitted, the board shall, prior to the first day of July, one thousand nine hundred eighty-one, and prior to the first day of March of each subsequent year in which the multiple adoptions are made by the state board of education, establish a committee of teachers and other educational specialists not to exceed thirty members and with the aid of said committee, shall on or before the first day of December, prior to county adoptions, select, approve and publish a list of at least five books or series of books in each subject and grade in the elementary and secondary subjects required to be taught by said board. If less than five books or series of books in any subject and grade are offered, the state board may list fewer than five. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before the first day of November of the year preceding the adoption by the county board.

§18-2A-5. Selection by county boards.

Textbook publishers, upon requests of county superintendents, shall furnish to county boards of education the requested sample copies of books that were selected and
placed on the state multiple list of textbooks by the state
board of education. The textbook publishers shall ship and
bill to the county boards of education at the lowest wholesale
prices with shipping charges prepaid. After the counties have
made their textbook adoptions and certified them to the state
board of education, all sample copies of books may be
returned to the publishers from whom obtained, shipping
charges to be paid by the publisher. County boards may, if
they elect to do so, retain the sample books, but shall pay the
publishers the lowest wholesale prices for them.

The county board of education shall, upon
recommendation of the county superintendent with the aid of
a committee of teachers not to exceed fifteen members and
not later than the first day of May of the year following that in
which the multiple list for the group was made and approved,
have the option to select from the state multiple list one or
more book(s) or series of books for each subject and grade to
be used as exclusive basal textbooks in the county for a
period of five years.

After the county board of education has adopted the basal
textbooks for use in the county, and not later than the
fifteenth day of May, the county superintendent shall send to
the state board of education and the respective publishers a
complete list of books adopted, properly certified by the
president of the county board of education, in such form as
the state board of education shall prescribe.

§18-2A-7. Retail outlets; exchange privilege; use of
supplementary books.

It shall be the duty of each contractor at his own expense to
place a sufficient number of books to supply the demand in
no less than three locations in the county as designated by the
county board of education. The books shall be available at the
designated locations at least two weeks before the beginning
of each school term. He shall also arrange for the exchange of
books at such places, allowing pupils or boards of education
an exchange price as liberal as granted on the same books to
any city, county, or state in the United States, like conditions
prevailing. The exchange privilege shall extend through one
entire school year. Nothing in this article is to be construed as
preventing the use of supplementary books, provided they do
not displace the adopted books, nor the use of more advanced books in such schools as may be ready for the same.

§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

No textbook shall be used in any public elementary or secondary school in West Virginia as a basal textbook for state required courses unless it has been approved and listed on the state multiple list of textbooks by the state board of education. Any changes of textbooks made by the state board of education shall not become effective until grades and classes of the respective county school districts have completed work for which the adopted book then in use was originally intended. The state board of education may upon request by a county board of education and upon justification of that request, and subsequent to the adoption by a county board of education, approve the adoption of additional books to meet the needs of specific children which were not provided for in the original adoption. Nothing in this section shall apply to the supplementary books that are needed from time to time.

The state board of education is authorized to make such rules and regulations as it may deem necessary and expedient to carry out the provisions of this article.

CHAPTER 84

(H. B. 1355—By Mr. Tucker and Mr. Goff)

(Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.)

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings of the county board of education; employment of teachers; public hearing concerning budget; publication of notice; compensation of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

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 com-
pliance 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 fifty-two 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 busi-
ness, 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 avail-
able to meet actual expenses of the members, but no allowance
shall be made except upon sworn itemized statements.

CHAPTER 85
(S. B. 210—By Mr. Ash and Mrs. Chace)

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

AN ACT to amend and reenact section fifteen, article five, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the school term;
employment term; instructional term; extension of terms; number of noninstructional days that may be scheduled.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARDS OF EDUCATION.

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

1 The board shall provide a school term for its schools which 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 day of September 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 making up canceled instructional days, 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 seven such noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.
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 seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining noninstructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

Where the employment term overlaps a teacher's participation 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 prescribed by article eight, chapter eleven of the code, as amended.

The public schools shall be open for the full instructional 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: Provided, 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 86
(Com. Sub. for S. B. 205—By Mr. Nelson)

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

AN ACT to amend and reenact section eighteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, establishing maximum teacher-pupil ratio of one to twenty-five per classroom in grades four through six by the school year one thousand nine hundred eighty-three-eighty-four, and authorizing state superintendent of schools to grant exemptions from such requirement under certain conditions; promulgation of rules and regulations by the state board of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 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, third, fourth, fifth and sixth grade classroom or classrooms for two or more grades, including one or more of the first, second, third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher of the grade or grades. 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 in the school year one thousand nine hundred eighty-three—eighty-four, 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 grades one through three, or for more than twenty pupils in kindergarten: Provided, however, That in the school year one thousand nine hundred eighty-three—eighty-four, and thereafter, the state superintendent is authorized, consistent with sound educational policy, (a) to permit on a statewide basis in grades four through six, more than twenty-five pupils per teacher in a classroom for the purposes of instruction in music and physical education, and (b) to permit more than twenty-five pupils per teacher in a classroom in grades four through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education during such year.

The state board of education shall promulgate rules and regulations defining and setting forth what constitutes extraordinary circumstances as used in this section.

CHAPTER 87
(S. B. 182—By Mr. Galperin)

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

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-seven, relating to required school breakfast programs for pupils to be provided by county boards of education, where federal funds provided, except when waiver obtained; basis for waiver application, notice and hearing thereon; permissive
school breakfast program after termination of federal funding; annual report to Legislature on exemptions granted; participation in school breakfast program by classroom teachers to be voluntary and not a part of their regular duties; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-37. School breakfast programs.

1 Beginning the school year one thousand nine hundred eighty-one—eighty-two, and continuing thereafter, each county board of education shall establish and operate a school breakfast program under which a nutritious breakfast shall be made available to all pupils enrolled in the schools of the county in accord with standards of the state department of education. Such standards shall include guidelines for determining the eligibility of pupils for paid breakfasts, free breakfasts and reduced price breakfasts: Provided, That nothing herein contained shall prohibit any school from providing free breakfasts to all its pupils if revenues received from such programs exceed the costs of such programs: Provided, however, That a particular school which because of compelling circumstances is not able to provide a satisfactory school breakfast program may apply to the state superintendent of schools for a waiver. Upon application the state superintendent of schools shall give notice and the opportunity to be heard to the parents and school and shall review the specific reasons for the waiver request, and if the state superintendent determines that a particular school is, because of compelling circumstances, not able to provide a satisfactory school breakfast program, it may be granted a waiver not to exceed two years except upon reapplication: Provided further, That if at any time federal financial appropriations to this state for school breakfast programs are terminated, county boards of education are hereby authorized but not required to continue such programs at their own expense.
The state superintendent of schools shall annually report to the Legislature on the first day of the regular session the schools exempted for that school term under the provisions of this section and shall state the reasons for such exemptions: Provided, That classroom teachers shall not be required to participate in the operation of the school breakfast program as part of their regular duties.

CHAPTER 88
(S. B. 267—By Mrs. Chace)

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

AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five-a, relating to prohibiting forced retirement of college or university professors with unlimited tenure prior to age seventy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


1 As of the effective date of this section, no person serving under a contract of unlimited tenure or similar arrangement providing for unlimited tenure at an institution of higher education shall be compelled to retire from such employment prior to attaining seventy years of age. In the event such person shall reach age seventy in the middle of a semester or fiscal year, such person shall not be compelled to retire prior to the end of the semester or fiscal year: Provided, That in no event shall such retirement be postponed beyond six months after the date on which such person attained the age of seventy: Provided, however, That nothing in this section shall be construed to preclude discharge of such person for cause.
CHAPTER 89

(Com. Sub. for H. B. 853—By Mr. Brenda and Mr. Given)

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

AN ACT to amend and reenact section three-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to excluding auxiliary and service personnel salaries from publication requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.

The county board of education of every county, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and the state superintendent of free schools, and cause to be published a statement revealing (a) the receipts and expenditures of the board during the previous fiscal year arranged under descriptive headings, (b) the name of each firm, corporation and person who received more than fifty dollars in the aggregate from all funds during the previous fiscal year, together with the aggregate amount received from all funds and the purpose for which paid: Provided, That such statement shall not include the name of any person who has entered into a contract with this board pursuant to the provisions of sections two, three, four and five, article two, chapter eighteen-a of this code, and (c) all debts of the board, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I-O 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 county board of education
shall pay the cost of publishing such statement from the main-
tenance fund of the board.

As soon as is practicable following the close of the fiscal
year, a copy of the published statement herein required shall
be filed by the county board of education with the state tax
commissioner and with the state superintendent of free
schools.

The county board of education shall transmit to any resi-
dent of the county requesting the same a copy of the published
statement for the fiscal year designated, supplemented by a
list of the names of all school personnel employed by the
board during such fiscal year showing the amount paid to
each, and a list of the names of each firm, corporation, and
person who received less than fifty dollars from any fund
during such fiscal year showing the amount paid to each and
the purpose for which paid.

CHAPTER 90
(S. B. 340—By Mr. McGraw, Mr. President)

[Passed March 27, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article
seventeen, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
admission and record of applicants to the West Virginia
schools for the deaf and blind; pupils' period of attendance;
special admissions; programs for youths over twenty-three
years of age.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-2. Admission and record of applicants; special programs and services.
§18-17-4. Period of attendance; special admissions.
§18-17-2. Admission and record of applicants; special programs and services.

Deaf and/or blind youth residents in the state, between the ages of five and twenty-three, inclusive, shall be enrolled in the schools on application to the superintendent, until the schools are filled. Applicants shall be admitted by the superintendent on the basis of need and degree of impairment as determined by the schools' admissions committee. It shall be the duty of the superintendent to keep a careful record of the names of all applicants with the dates of their admission and discharge, their ages, post-office addresses, the names of their parents or guardians, and the degree, cause and circumstances of their deafness or blindness.

Nothing in this section shall be construed to prevent the school from providing special education programs including, but not limited to, classes, parent education, home teaching or visiting teacher services for deaf and blind children from birth. The schools may also enter into contractual arrangements with counties to provide evaluation, short-term instruction and other educational services, including direct instruction.

§18-17-4. Period of attendance; special admissions.

The pupils of said schools may continue therein until completion of the prescribed course of study, or a lesser period of time which the condition and progress of the pupils may justify, as determined by the state board of education upon recommendation of the school's superintendent. After all applicants between the prescribed ages of five and twenty-three years, inclusive, who are deaf or blind individuals working toward completion of the requirements for high school graduation have been enrolled, if there are additional accommodations, the superintendent, on recommendation of the admissions committee, may enroll other deaf pupils and blind pupils who first are of preschool age, and second are post-secondary students up to twenty-three years of age who have completed the requirements for high school graduation, and upon such terms as the state board of education may prescribe; but it shall be distinctly understood that such persons shall withdraw from the institution in the order of their admission.
to make room for new applicants between the ages prescribed in section two of this article.

Vocational education and other educational services may be provided for deaf and blind students beyond age twenty-three in cooperation with the division of vocational rehabilitation.

CHAPTER 91
(S. B. 579—By Mr. Galperin and Mr. Nelson)

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

AN ACT to amend and reenact section one, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact sections six, seven, eight and nine, article twenty-six of said chapter eighteen, all relating to the West Virginia board of regents fixing tuition and other fees at state institutions of higher education and establishing a higher education resource fee to be charged all students enrolled for credit at state institutions of higher education; providing for the disposition of fee collections and institutional reports on the use of portions of said collections; requiring the West Virginia board of regents to hold a certain number of meetings each year and requiring said board to meet with certain persons, organizations and groups; establishing a certain structure and organization for the staff of said board; establishing and defining certain powers and duties of said board regarding planning, budgeting, submission of reports, review and evaluation of institutional programs and presidents and other areas; replacing institutional advisory boards with institutional boards of advisors.

Be it enacted by the Legislature of West Virginia:

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

Article

24. Fees and Other Moneys Collected at State Institutions of Higher Education.

26. West Virginia Board of Regents.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

§19-24-1a. Higher education resource fee.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

1 The board of regents shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education and may include among such fees any one or more of the following: (1) Health service fees, (2) infirmary fees; (3) student activities, recreational, athletic and extracurricular fees, which said fees may be used to finance a student's attorney to perform legal services for students in civil matters at the state universities and state colleges: Provided, That such legal services shall be limited to only those types of cases, programs or services approved by the administrative head of the state educational institution where such legal services are to be performed; and (4) graduate center fees, and branch college fees, or either, if the establishment and operation of graduate centers or branch colleges are otherwise authorized by law. All fees collected under (1), (2) and (3) shall be paid into special funds and shall be used only for the purposes for which the fees are collected; and all fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely
for the maintenance and operation of the graduate center
or branch college at which they were collected: Provided,
That the maximum fees to be collected under this section
for resident students shall not exceed five hundred dol-

ars per semester; and for nonresident students, one
thousand dollars per semester. The schedule of all fees,
and any changes therein, shall be entered in the minutes
of the meeting of the board, and the board shall file with
the legislative auditor a certified copy of such schedule
and changes.

In addition to the fees mentioned in the preceding
paragraph, the board of regents may impose and collect a
student union building fee. All such building fees collected
at the institution shall be paid into a special student
union building fund for such institution, which is hereby
created in the state treasury, and shall be used only for
the construction, operation and maintenance of a student
union building or a combination student union and dining
hall building or for the payment of the principal of and
interest on any bond issued to finance part or all of the
construction of a student union building or a combination
student union and dining hall building or the renovation
of an existing structure for use as a student union build-
ing or a combination student union and dining hall build-
ing, all as more fully provided in section six of this
article. Any moneys in such funds not immediately
needed for such purposes may be invested in any such
bonds or other securities as are now or hereafter
authorized as proper investments for state funds.

Refund, as an erroneous payment, may be made of any
such fees, upon the voluntary or involuntary withdrawal
from classes of any student, until eight weeks of the
school semester or term have expired, but no refund may
be made thereafter.

§18-24-1a. Higher education resource fee.

In addition to the fees specifically provided for in
section one of this article, all students enrolled for
credit at the state's public colleges and universities shall
pay a higher education resource fee. The West Virginia board of regents shall fix the fee rates for the various institutions and classes of students and may from time to time change these rates. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and is not limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

Eighty percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. The remaining twenty percent of fee collections shall be deposited in a special fund and expended or allocated by the board of regents to meet general operating expenses of the state system of higher education, excluding personal services: Provided, That the board shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article twenty-two-b of this chapter.

The board of regents shall, on or before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-6. Meetings; compensation of members.

§18-26-7. Organization of board; staff; offices.
§18-26-6. Meetings; compensation of members.

1. The board shall hold at least ten meetings in every fiscal year commencing July one and ending the following June thirty, one of which meetings, to be known as the annual meeting, shall be held in June. At least four meetings shall be held on the campuses of different state colleges and universities each year, at which meetings the board shall set aside time to afford administrators, faculty, students and classified staff an opportunity to discuss issues affecting those groups. At least one meeting each year shall be held with both the advisory council of faculty and the advisory council of students, each of these bodies to be met with separately. Except as otherwise provided in this section, meetings shall be held on such dates and at such places as the board may prescribe. In addition to the statutorily required meetings, the board may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the request of at least five appointed members of the board.

2. Of the twelve members, six members of the board shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the board.

3. The members of the board shall be paid one hundred dollars per diem for actual time spent in the performance of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the board.

§18-26-7. Organization of board; staff; offices.

1. At its annual meeting in June of each year, the board shall elect a president and such other officers as the board
may deem necessary or desirable for a one-year term commencing the first day of July following the annual meeting and ending the thirtieth day of June of the following year. The president and such other officers shall be elected from the members of the board appointed by the governor. The president of the board shall be eligible to succeed himself for one term.

The board shall employ a chancellor and such other professional, administrative, clerical and other employees as may be necessary to assist the board in the performance of its duties and responsibilities. The board shall further delineate staff responsibilities as deemed desirable and appropriate to provide mission and program liaison with (1) the state universities, graduate schools and professional schools, (2) the state colleges, exclusive of the community colleges, and (3) the community colleges and community college components of four-year institutions, recognizing the inherent differences in the missions and capabilities of these three categories of higher education institutions. The board shall prescribe the duties and fix the compensation and emoluments of all such employees, and they shall serve at the will and pleasure and under the direction and control of the board or its designated representative. The board shall provide suitable offices for the chancellor and his staff in Charleston.


(a) The board shall have the power and duty to:

(1) Determine, control, supervise and manage the financial, business and educational policies and affairs of the state colleges and universities;

(2) Prepare a master plan for public higher education in the state, including therein, both statewide and for each state college and university, the goals, missions, resource requirements, physical plant needs, state man-power needs, enrollment levels and other planning determinates and projections necessary in such a plan. The plan shall also address the roles and missions of other
public and private postsecondary education providers in the state. The board shall involve in the development of the plan all segments of postsecondary education in the state, the executive and legislative branches of government and the general public. The plan shall be established for periods of not less than five nor more than ten years, and shall be periodically revised as necessary;

(3) Prescribe and allocate among the state colleges and universities, in accordance with the master plan, specific functions and responsibilities to meet the higher education needs of the state and to avoid unnecessary duplication;

(4) Consult with the executive branch and the Legislature in the establishment of funding parameters, priorities and goals;

(5) Establish guidelines for and direct the preparation of budget requests for each of the state colleges and universities, such requests to relate directly to missions, goals and projections in the state master plan for higher education;

(6) Consider, revise and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state colleges and universities; or the board may, in its discretion, submit a single budget for the state colleges and universities, but, if a single budget is submitted, it shall be accompanied by a tentative schedule of proposed allocations of funds to the separate colleges and universities;

(7) Prepare and submit to the speaker of the House of Delegates and the president of the Senate, no later than the first day of the regular session of the Legislature, and to any member of the Legislature upon request, an analysis of the budget request submitted under subdivision (6) of this subsection. The analysis shall summarize all amounts and sources of funds outside of the general revenue fund anticipated to be received by each state college and university and the effect of such funds on the budget request;
(8) Prepare and submit to the legislative auditor, no later than the first day of July of each year, the approved operating budgets of each state college and university for the fiscal year beginning on that date and shall also submit, no later than the first day of August, a summary of federal and other external funds received at each institution during the previous fiscal year;

(9) Establish a system of information and data management that can be effectively utilized in the development and management of higher education policy, mission and goals;

(10) Review, at least every five years, all academic programs offered at any state college and university. The review shall address the viability, adequacy and necessity of the programs in relation to the master plan;

(11) Utilize faculty, students, and classified staff in planning and decision making at the institution level which affects those groups;

(12) Administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators;

(13) Establish a uniform system for the hearing of employee grievances and appeals therefrom, so that aggrieved parties may be assured of timely and objective review;

(14) Conduct performance evaluations of institution presidents in every fourth year of their employment as president, recognizing unique characteristics of their institutions and utilizing institutional personnel, institutional boards of advisors, board staff and persons knowledgeable in higher education matters who are not otherwise employed by the board; and

(15) Submit to the joint committee on government and finance, no later than the first day of December of each year, an annual report of the performance of the state system of higher education during the previous fiscal year as compared to stated goals in the master plan and the budget appropriations for that fiscal year.
(b) The power herein given to the board to prescribe and allocate among the state colleges and universities specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state colleges and universities but such power shall supersede any such provision of law: Provided, That the board may delegate, with prescribed standards and limitations, such part of its power and control over the business affairs of a particular university or state college to the president or other administrative head of such university or college in any case where it deems such delegation necessary and prudent in order to enable such institution to function in a proper and expeditious manner. Any such delegation of power and control may be rescinded by the board at any time, in whole or in part.

The board is authorized and empowered, from time to time, to promulgate such rules and regulations as it may deem necessary and convenient to ensure the full implementation of its powers and duties.


(a) After the thirtieth day of June, one thousand nine hundred eighty-one, there shall be established at each state college and university, hereinafter referred to as the "institution," excluding centers and branches thereof, an institutional board of advisors. The board of advisors shall replace any advisory board in existence under the previous provisions of this section, except that any such advisory board may continue until the thirtieth day of June, one thousand nine hundred eighty-one. The board of advisors shall consist of eleven members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the
student body; a member of the institutional classified
staff duly elected by the classified staff; and, appointed
by the board of regents, seven lay citizens of the state who
have demonstrated a sincere interest in and concern for
the welfare of the institution and who are representative
of its population and occupations, including at least two
alumni of the institution. Of the seven lay citizen
members, no more than four may be of the same political
party. The administrative officer, faculty member, stu-
dent member and classified staff member shall serve for
a term of one year and the seven lay citizen members
shall serve terms of four years each, except that the
initial appointments shall be for terms of one, two,
three and four years. All members shall be eligible to
succeed themselves for no more than one additional
term. A vacancy in an unexpired term of a member
shall be filled within sixty days of the occurrence thereof
in the same manner as the original appointment or
election. All initial terms shall begin on the first day
of July, one thousand nine hundred eighty-one. Except
in the case of a vacancy, all elections shall be held and
all appointments shall be made no later than the thirtieth
day of April preceding the commencement of the term.

(b) The board of advisors shall hold a regular meet-
ing at least quarterly, commencing in July of each year.
Additional meetings may be held upon the call of the
chairman, president of the institution, or upon the re-
quest of at least four members. One of the seven lay
citizen members shall be elected as chairman by the
board of advisors in July of each year: Provided, That
a lay citizen member may not serve as chairman for
more than two consecutive years at a time. A majority
of the members shall constitute a quorum for conduct-
ing the business of the board of advisors. The presi-
dent of the institution shall make available resources
of the institution for conducting the business of the
board of advisors. The members of the board of ad-
visors shall be reimbursed for all reasonable and neces-
sary expenses actually incurred in the performance of
their duties under this section upon presentation of an
itemized sworn statement thereof. All expenses incurred
58 by the board of advisors and the institution under this
59 article shall be paid from funds allocated to the institu-
60 tion for such purpose.

61 (c) The board of advisors shall have the authority
62 and duty to review, prior to their submission by the
63 president to the board of regents, all proposals of the
64 institution in the areas of mission, academic programs,
65 budget, capital facilities and such other matters as re-
66 quested by the president of the institution or the board
67 of regents or otherwise assigned to it by law. The board
68 of advisors shall comment on each such proposal in
69 writing, with such recommendations for concurrence
70 therein or revision or rejection thereof as it deems proper.
71 Such written comments and recommendations shall ac-
72 company the proposal to the board of regents, and the
73 board of regents shall include such comments and recom-
74 mendations in its consideration of and action on the
75 proposal. The board of regents shall promptly acknowl-
76 edge receipt of the comments and recommendations and
77 shall notify the board of advisors in writing of any
78 action taken thereon.

79 (d) The board of advisors shall have the authority
80 and duty to review, prior to their implementation by
81 the president, all proposals regarding institution-wide
82 personnel policies. The board of advisors may com-
83 ment on such proposals in writing.

84 (e) Upon the occurrence of a vacancy in the office
85 of president of the institution, the board of advisors
86 shall serve as a search and screening committee for
87 candidates to fill the vacancy under guidelines estab-
88 lished by the board of regents. When serving as a search
89 and screening committee, the board of advisors and the
90 board of regents are each authorized to appoint up to
91 three additional persons to serve on the committee as
92 long as the search and screening process is in effect. The
93 three additional appointees of the board of advisors shall
94 be faculty members of the institution. Only for the pur-
95 poses of the search and screening process, such addi-
96 tional members shall possess the same powers and rights
97 as the regular members of the board of advisors, includ-
ing reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the board of regents for consideration and appointment. If the board of regents rejects all candidates so submitted, the committee shall submit the names of at least three additional candidates, and this process shall be repeated until the board of regents appoints one of the candidates so submitted. The board of regents shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

CHAPTER 92

(Com. Sub. for H. B. 1230—By Mr. Whitlow and Mr. Smith)

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

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-c, relating to education; West Virginia board of regents; establishment of advisory council for classified employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-9c. Advisory council of classified employees.

1 During the month of April, one thousand nine hundred eighty-two, and annually thereafter, each state college, community college, including Potomac state college of West Virginia University, and university president or other administrative head shall convene a meeting of all classified employees of
his institution. At these meetings, the classified employees of each such college and university shall elect one classified employee to serve on the advisory council of classified employees, which is hereby created, consisting of one classified employee, so elected, from each such college and university. Terms of the members of such council shall be for one year and shall begin on the first day of May of each year.

The advisory council of classified employees shall meet at least once each quarter, and shall meet during the month of June each year at which meeting the council shall elect a chairman. No member may vote by proxy at such election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, the council shall elect, in the manner prescribed by this section for the election of a chairman, a member of the council to preside over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy.

The advisory council of classified employees, through its chairman and in any other appropriate manner, shall consult and advise the board of regents in matters of higher education in which the classified employees of this state's colleges and universities may have an interest.

Members of the advisory council shall be eligible to succeed themselves. Members of the advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.

The board of regents shall furnish a secretarial service to the advisory council, and the advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of the state's colleges and universities.

As used in this section the term "classified employees" means
those employees designated by the board of regents as classified and does not include faculty and certain executive and administrative personnel.

CHAPTER 93
(Com. Sub. for S. B. 635—By Mr. McGraw, Mr. President)
[Passed April 11, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing provisions for leave of absence for a tenured professional for nonelected governmental employment while retaining tenure, rank and position.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-25. Effect of leave of absence on academic tenure, rank, etc.

1 Any other provision of law to the contrary notwithstanding any tenured professional at any higher educational institution subject to the control and supervision of the West Virginia board of regents, who shall, with the consent of the governing authority of the higher educational institutions by which he is employed, absent himself from his duties at such institution to accept employment in any nonelected governmental capacity shall be afforded such benefits of academic tenure, rank and position as if such person had remained continuously in the position retained and held at such higher educational institutions immediately preceding any such absence:

Provided, That such leave of absence shall not exceed two
14 years: Provided, however, That tenure and rank may be
15 retained during an absence of more than two years if the
16 president of the institution from which such person is on
17 leave of absence submits in writing during each of such
18 years a request for such retention to the board of regents,
19 and the board of regents approves such request for each
20 such year: Provided further, That any individual who re-
21 mains in governmental employment with leave granted in
22 accordance with this section shall forfeit all rights to
23 academic tenure, rank and position formerly held by him
24 at such institution after the eighth year of such employ-
25 ment.

CHAPTER 94
(Com. Sub. for H. B. 1286—By Mr. Kidd)

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

AN ACT to amend and reenact section nine, article two, chapter
eighteen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to school personnel
and authorizing the county board of education, when needed,
to employ and assign, through written contract, assistant
principals who shall work under the direction of the school
principals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-9. Duties and responsibilities of school principals; assistant
principals.

Upon the recommendation of the county superintendent of
schools, the county board of education shall employ and assign,
through written contract, public school principals who shall
supervise the management and the operation of the school or
schools to which they are assigned. Such principals shall hold
valid administrative certificates appropriate for their assignments.

Under the supervision of the superintendent and in accordance with the rules and regulations of the county board of education, the principal shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned.

The principal may submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the school or schools under said principal's control. Such recommendation shall be submitted in writing as prescribed by the superintendent.

The principal shall perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the county board of education.

Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal.

Such assistant principals shall hold valid administrative certificates appropriate for their assignments.

Nothing contained in this section shall be construed to reduce or limit the rights and privileges of principals and assistant principals as teachers under the provisions of section one, article one, chapter eighteen of the code of West Virginia as amended; section one, article one, chapter eighteen-a; and other provisions of this code.

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**CHAPTER 95**

(Com. Sub. for S. B. 164—By Mr. Gilligan)

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

AN ACT to amend article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section eleven, relating to the right of an employee to a hearing on a dispute with a county board of education; and requiring the board to pay reasonable attorney's fees, court costs, and court reporter's fees when employee prevails.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-11. Employee's right to hearing on any dispute; fees and costs.

1 In case of dispute or controversy between the county board of education and any county board employee, except the superintendent, associate superintendent, or assistant superintendent, regarding transfer, suspension, dismissal, assignment, grievance, salary, termination of contract, job classification, or any similar matter, the employee shall be entitled to the payment of attorney fees and court reporter costs as hereinafter provided. When the dispute involves assignment, transfer, suspension, termination or renewal of contract or dismissal, the employee shall have a right, upon request, to an immediate hearing before the board. When the dispute involves grievance, salary, job classification, or any similar matter, the employee shall have a right to a hearing, upon request, before the board after exhausting all available grievance procedures exclusive of a board hearing.

If, after such a hearing, the employee institutes any proceeding in a circuit court against the board, based upon such dispute or controversy, and shall substantially prevail, the board shall be liable to the employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing the employee in the hearing before the board, in the circuit court, and in the supreme court of appeals, and shall be further liable to the employee for the charges, if any, for any court reporter's costs incurred during the hearing before the board: Provided, That
in no event shall such attorney’s fees be awarded in excess of
a total of five hundred dollars for the board hearing and
circuit court proceedings nor an additional five hundred
dollars for supreme court proceedings: Provided, however,

That the requirements of this section shall not be construed
to limit the school employee’s right to recover reasonable
attorney’s fees in a mandamus proceeding brought under
section eight, article four, chapter eighteen-a of this code.

CHAPTER 96
(Com. Sub. for H. B. 1206—By Mr. Barley and Mr. Harden)

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

AN ACT to amend article four, chapter eighteen-a of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
eight-b, relating to providing certain rights based on seniority
for school personnel; providing certain rules with respect to
such seniority and when such seniority shall begin.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights.

1 A county board of education shall make decisions affecting
2 promotion of auxiliary and service personnel on the basis of
3 seniority, qualifications and evaluation of past service.

4 For purposes of determining seniority under this section, an
5 employee’s seniority begins on the date that he enters into
6 his assigned duties.

7 Notwithstanding any other provisions of this chapter to the
8 contrary, decisions affecting such personnel with respect to
extra-duty assignments, shall be made in the following manner:
An employee with the greatest length of service time in a
particular category of employment shall be given priority in
accepting such assignments, followed by other fellow em-
ployees on a rotating basis according to the length of their
service time until all such employees have had an opportunity
to perform similar assignments. The cycle then shall be
repeated.

All decisions by county boards of education concerning
reduction in work force of all personnel shall be made on the
basis of seniority, as hereinafter provided:

(1) The seniority of any such service and auxiliary per-
sonnel shall be determined on the basis of the length of time
the employee has been employed by the county board of
education within a particular job classification. For the pur-
pose of establishing seniority for a preferred recall list as
hereinafter provided, when an employee has been employed
in one or more classifications, the seniority accrued in each
previous classification shall be retained by the employee.

Should a county board of education be required to reduce
the number of employees within a particular job classification,
the employee with the least amount of seniority within that
classification or grades of classification shall be properly
released and employed in a different grade of that classification
if there is a job vacancy: Provided, That if there is no job
vacancy for employment within such classification or grades
of classification, he shall be employed in any other job
classification which he previously held with the county board
if there is a vacancy and shall retain any seniority accrued in
such job classification or grade of classification.

If two or more employees accumulate identical seniority,
the priority shall be determined by a random selection system
established by the employees and approved by the county
board.

(2) The seniority of professional personnel shall be deter-
mained on the basis of the length of time the employee has been
employed by the county board of education. For the purposes
of establishing seniority for a preferred recall list as herein-
after provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area.

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter: Provided, That such employee shall be employed in any other position for which he is certified and/or licensed if his seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any position for which the employee is qualified or to an area for which an employee has certification and/or licensure.

Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

The county board shall be required to notify all employees on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee; it shall be the duty of each such employee to notify the county board of any change in the address of such employee.

No position openings may be filled by the county board, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept re-employment.
CHAPTER 97

(Com. Sub. for H. B. 711—By Mrs. Wehrle)

[Passed April 4, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to bonus that county boards of education may pay to employees for unused days of personal leave.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-10a. Bonus for unused days of personal leave.

1 County boards of education are authorized to pay to their employees or to defined groups thereof, for the purpose of reducing absenteeism, a bonus at the end of an employment term for each unused day of personal leave accumulated by the employee during that employment term.

CHAPTER 98

(Com. Sub. for S. B. 194—By Mr. Holliday)

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

AN ACT to amend and reenact section fourteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel;
salaries, wages and other benefits; duty-free lunch period for teachers; establishing and implementing a daily planning period for teachers.

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

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

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

§18A-4-14. Duty-free lunch and daily planning periods for teachers.

1 Notwithstanding the provisions of section seven, article two of this chapter, every public school teacher:

2 (1) Shall be provided a daily lunch recess of not less than thirty consecutive minutes, and no teacher shall be assigned any responsibilities during this recess.

3 (2) Shall be provided at least one planning period per day for each teacher to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which the teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period.

4 Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection.

5 (3) Nothing in this section shall be construed to prevent any teacher from exchanging his right to a lunch recess or a daily planning period for any compensation or benefit mutually agreed upon by that teacher and the county superintendent of schools or his agent: *Provided,* That the parties may not agree to terms which are different from those available to any other teacher within the individual school or in any way discriminate among teachers within the individual school.
AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to the employment of substitute auxiliary and service personnel and establishing their pay.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-15. Employment of auxiliary and service personnel substitutes.

The county board may employ and the county superintendent, subject to the approval of the county board of education, may employ and assign substitute auxiliary and service personnel to perform any of the following duties:

1. To fill the temporary absence of another auxiliary or service employee;

2. To fill the position of a regular auxiliary or service employee on leave of absence: Provided, That if such leave of absence is to extend beyond thirty days, the board, within ten working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill such position, giving preferential hiring treatment to persons previously assigned to such position. The substitute shall hold such position and regular employee status only until the regular employee returns to such position and shall have and shall be accorded all rights, privileges and benefits pertaining to such position;

3. To perform the service of an auxiliary or service employee who is authorized to be absent from duties without loss of pay;
(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, retirement, permanent disability or death of the regular auxiliary or service employee who had been assigned to fill such position: Provided, That within ten working days from the commencement of the vacancy, the board shall give regular employee status to a person hired to fill such vacancy so created, giving preferential hiring treatment to persons previously assigned to such position, and such person shall have and shall be accorded all rights, privileges and benefits pertaining to such position; or

(5) To fill the vacancy created by a regular employee’s suspension: Provided, That a substitute auxiliary and service employee shall not be assigned to fill the vacancy on a permanent basis until such termination by the county board of education becomes final.

The salary of a substitute auxiliary or service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.

Before any auxiliary or service substitute employee enters upon his duties, he shall execute with the county board of education a written contract as provided in sections four and five, article two of this chapter.

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CHAPTER 100

(Com. Sub. for S. B. 462—By Mr. Heck)

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

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to extracurricular assignments for school employees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-16. Extracurricular assignments.

(1) Notwithstanding the provisions of section seven, article two of this chapter and section eight, article four of this chapter, the assignment of teachers and auxiliary and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or a designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board: Provided, That if a properly certified replacement for a coach or assistant coach of one or more interscholastic athletic teams or a band director satisfactory to the board cannot be employed, the employee under the extracurricular assignment agreement for such duty shall continue that assignment until a properly certified person is employed for the position, but such
continued assignment shall not be longer than one year: Provided, however, That dismissal of an interscholastic athletic coach or assistant coach or band director for cause pursuant to section eight, article two of this chapter, under his contract of employment or his extracurricular assignment agreement shall be grounds, at the instance of either party, for termination of the other such contract: Provided further, That any interscholastic athletic head coach, assistant coach or band director who resigns from his extracurricular assignment may at the discretion of the board be placed on the list of transfer and subsequent reassignment pursuant to section seven, article two, chapter eighteen-a of this code.

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CHAPTER 101
(Com. Sub. for H. B. 923—By Mr. Tompkins and Mr. Seacrist)

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

AN ACT to amend and reenact sections five and fourteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the time of holding municipal elections in the year one thousand nine hundred eighty-one and thereafter; providing that certain municipal elections may be held at the same time as state elections; and providing for certain conditions applicable to such elections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-5. Regular election of officers; establishment of longer terms.

§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.
§8-5-5. Regular election of officers; establishment of longer terms.

After the first election of officers of a city, town or village, the regular election of officers thereof shall be held on the first Tuesday in May of the appropriate year, unless otherwise provided in the charter of said city or the special legislative charters of said towns or villages, as the case may be: Provided, That no such municipal election, whether the same be constituted a primary or general election may be held on the same day as the county-state primary election unless the voting precinct boundaries in such city, town or village coincide with the voting precinct boundaries established by the county commission and there are separate election officials provided for conducting the municipal election. In the event that the charter of a city or the special legislative charter of a town or village provides for its municipal election to be held on the same day as the county-state primary election, and the voting precinct boundaries established by the city, town or village do not coincide with the voting precinct boundaries established by the county commission, then, beginning in the year one thousand nine hundred eighty-one, such charter provision, in the case of a city, or such special legislative charter provision, in the case of a town or village, shall be null and void and such municipal election shall be held on the first Tuesday in May: Provided, however, That where such charter provision provides for separate registration books and separate election officials for municipal elections, a city, town or village may conduct its municipal election on the same day as the county-state primary election notwithstanding that its voting precinct boundaries do not coincide with the voting precinct boundaries established by the county commission. The language of this section shall not be construed to prevent any city, town or village from amending the provisions of its charter or special legislative charter, as the case may be, to provide that its municipal election be held on some day other than the first Tuesday in May: Provided further, That said amendment is not in conflict with the provisions of this section. Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision as a whole or charter amendment, as the case may be, providing for four-year terms is voted upon and approved by a majority of the legal votes cast, but the ballots, or
ballot labels where voting machines are used, for the election of officers must bear information to the effect that the officers are being elected for four-year terms in the event the proposed charter, the proposed charter revision as a whole or charter amendment, as the case may be, is approved as aforesaid: 

And provided further, That officers of a town or village may be elected for a four-year term upon submission to the qualified voters of the town or village at a regular municipal election of a proposition calling for four-year terms and approval of such proposition by a majority of the legal votes cast with respect thereto. Officers of a town or village may be elected for a four-year term at the same election at which the proposition calling for four-year terms is voted upon and approved by a majority of the legal votes cast, but the ballots, or ballot labels where voting machines are used, for the election of officers must bear information to the effect that the officers are being elected for four-year terms in the event the proposition is approved as aforesaid.

§8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.

Except as otherwise provided by charter provision or ordinance or this code, municipal executive committees shall exercise similar functions and be governed by the same laws in regard to municipal primary elections and regular municipal elections as county executive committees in regard to county-state primary and general elections, so far as the same may be applicable. All expenses of conducting municipal primary elections and regular municipal elections shall be paid by the municipality. The provisions of chapter three of this code, referring more particularly to primary elections and general elections, shall, so far as the same can be applied and so far as not otherwise provided by charter provision or ordinance, govern the conduct of municipal primary elections and regular municipal elections, as the case may be. No municipal primary election shall be held on the day of the county-state primary election except as provided in section five of this article nor less than twenty-five days immediately preceding the regular municipal election, unless a shorter period of time is established by charter or ordinance.
AN ACT to amend article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to municipal elections generally; providing for the application of the provisions of the West Virginia election code to municipal elections; making the offenses and penalties contained in article nine and other articles of said chapter three applicable to all municipal elections; and directing every municipality to designate by charter or ordinance the persons who perform the same duties as the election officers named in said chapter.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-2a. Municipal elections.

1 Notwithstanding other provisions of this code or the provisions of any special legislative or home rule city charter, the provisions of articles eight and nine of this chapter and of any regulations promulgated under authority granted in articles eight and nine of this chapter and any provisions of this chapter making a practice or conduct unlawful shall apply to every municipal election held for any purpose.

8 For the purposes of this section and the application of articles eight and nine of this chapter, the application of the regulations mentioned in this section and the application of provisions of this chapter making a practice or conduct unlawful, the provisions of law which impose any duty upon or define any offense or prohibition with respect to the duty or
authority of a county officer or county election officer or
body of county election officers shall be construed to and
shall apply with equal force and effect to the person or persons
in a municipal election upon whom this code or the city
charter or ordinance imposes such duty or vests the same or
similar authority.

Every municipality shall by charter or ordinance designate
the persons in such municipality who perform the same duties
as any officer in a county election.

This section shall not be construed to abrogate the appli-
cability of other provisions of this chapter to municipal elec-
tions.

CHAPTER 103
(Com. Sub. for S. B. 131—By Mr. Yankovich)

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

AN ACT to amend and reenact section twenty-one, article one;
section eleven, article four; and section twelve, article four-a,
all of chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to elections;
and drawing by lot to determine the ballot position of
candidates for the office of delegate to a political party national
convention.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one; section eleven, article four;
and section twelve, article four-a, all of chapter three of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted, all to read as follows:

Article
4. Voting Machines.
4A. Electronic Voting Systems.
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1 It shall be the duty of the board of ballot commissioners for each county to provide printed ballots for every election for public officers in which the voters or any of the voters within the county participate, and cause to be printed, on the appropriate ballot, the name of every candidate, but in no case shall the ballot contain any title, position, rank, degree, or such, including, but not limited to, doctor, reverend, PhD., or the equivalent, whose name has been certified to or filed with the clerk of the circuit court of the county in any manner provided for in this chapter. In any case wherein the constitution or statutes limit or prescribe the number of candidates or elected officers to be selected by the voters in any district or other governmental subdivision, the ballot commissioners, in the preparation of such ballots, shall cause to be printed thereon, in plainly worded language, the number of candidates to be voted for in each district or other governmental subdivision.

The clerk of the circuit court shall appoint a time at which all candidates for the office of delegate to a political party national convention are to appear in his office for the purpose of drawing by lot to determine where their names will appear on the ballots. The clerk shall give due notice of such time to each such candidate by registered or certified mail, return receipt requested. At the time appointed, all such candidates for the office of delegate to a political party national convention shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots.

The printing of the ballots, and all other printing caused to be done by the board of ballot commissioners, shall be
39 contracted for with the lowest responsible bidder. Ballots
40 other than those caused to be printed by the respective
41 boards of ballot commissioners, according to the provisions
42 of this chapter, shall not be cast, received or counted in any
43 election.

44 For each such election to be held in their county and at least
45 thirty days before the date of such election, the board of ballot
46 commissioners shall cause to be printed official ballots to not
47 more than one and one-fifth times the number of registered
48 voters in the county. Provisions of article five of this chapter
49 shall govern the printing of ballots for primary elections. The
50 ballots so printed shall be wrapped and tied in packages, one
51 for each precinct in their county, containing ballots to the
52 number of one and one-twentieth times the number of
53 registered voters in such precinct. Each package of ballots
54 shall be sealed with wax, and plainly marked with the
55 number of ballots therein, the name of the magisterial
56 district, and the number of the voting place therein, to which
57 it is intended to be sent. The names of the ballot
58 commissioners shall also be endorsed thereon.

ARTICLE 4. VOTING MACHINES.

§3-4-11. Ballot label arrangement in machines; drawing by
lot to determine position of candidates on
machines; adjustment; records.

1 When the ballot labels are printed and delivered to the clerk
2 of the county commission, he shall place them in the ballot
3 frames of the voting machines in such manner as will most
4 nearly conform to the arrangement prescribed for paper
5 ballots, and as will clearly indicate the party designation or
6 emblem of each candidate. Each column or row containing
7 the names of the office and candidates for such office shall be
8 so arranged as to clearly indicate the office for which the
9 candidate is running. The names of the candidates for each
10 office indicated shall be placed on the ballot.

11 The clerk of the circuit court shall appoint a time at which
12 all candidates for the House of Delegates and the office of
13 delegate to a political party national convention are to appear
14 in his office for the purpose of drawing by lot to determine
15 where their names will appear on the voting machines. The
16 clerk shall give due notice of such time to each candidate by
registered or certified mail, return receipt requested. At the
time appointed, all such candidates for the House of
Delegates and office of delegate to a political party national
congress shall assemble in the office of such clerk and such
candidates shall then proceed to draw by lot to determine
where their names shall appear on the voting machines. The
number so drawn by each such candidate shall determine
where his or her name shall appear on the voting machines. In
the event any candidate or candidates fail to appear at the
time appointed, the clerk shall draw for such absent
candidate or candidates in the presence of those candidates
assembled, if any, and the number so drawn by the clerk shall
determine where the name of any absent candidate or
candidates shall appear on the voting machines.

The clerk shall then see that the counters referred to in
subsection eleven of section eight of this article are set at zero
(000) and shall lock the operating device and mechanism and
devices protecting the counter and ballot labels. The clerk
shall then enter in an appropriate book, opposite the number
of each precinct, the identifying or distinguishing number of
the specific voting machine or machines to be used in that
precinct.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices;
drawing by lot to determine position of candidates
on ballots or ballot labels; sealing of devices; re-
cord of identifying numbers.

When the ballot labels are printed and delivered to the clerk
of the county commission, he shall place them in the vote
recording devices in such manner as will most nearly
conform to the arrangement prescribed for paper ballots, and
as will clearly indicate the party designation or emblem of
each candidate. Each column row or page containing the
names of the office and candidates for such office shall be so
arranged as to clearly indicate the office for which the
candidate is running. The names of the candidates for each
office indicated shall be placed on the ballot.

The clerk of the circuit court shall appoint a time at which
all candidates for the House of Delegates and the office of
delegate to a political party national convention are to appear in his office for the purpose of drawing by lot to determine where their names will appear on the ballots or ballot labels. The clerk shall give due notice of such time to each such candidate by registered or certified mail, return receipt requested. At the time appointed, all such candidates for the House of Delegates and the office of delegate to a political party national convention shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots or ballot labels. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots or ballot labels. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots or ballot labels. The clerk shall then seal the vote recording devices so as to prevent tampering with ballot labels. The clerk shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific vote recording device or devices to be used in that precinct.

CHAPTER 104
(S. B. 487—By Mr. Wright)

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

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving absent voters outside the continental limits of the United States, to the maximum extent practicable, an effective vote by enlarging the time during which said voters can apply for an official absent voter’s ballot; restricting the time in which said ballots must be mailed to said voters; eliminating the oath and attestation requirements for federal postcard
applications executed outside the continental limits of the
United States; and giving county commissions and circuit
clerks certain duties and responsibilities with respect to
the foregoing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absent voter's ballot by mail.

1. A person desiring to vote an absent voter's ballot by
mail may, not more than one hundred twenty days prior
to the date of any primary, general or special election in
the case of any person outside the continental limits of
the United States and not more than sixty days prior to
the date of any primary, general or special election in the
case of any other person, make application by mail to the
clerk of the circuit court of the county in which he is
registered to vote for an official absent voter's ballot or
ballots to be voted at such election, except that the clerk
of the circuit court shall not honor any such application
for an absent voter's ballot received by him after the
fourth day next preceding the date of the election. In
computing such fourth day, the day of conducting the
election shall be excluded. The application to be used by
persons who wish to vote an absent voter's ballot by mail
shall be prescribed by the secretary of state and shall be
in substantially the following form:

APPLICATION FOR VOTING AN ABSENT
VOTER'S BALLOT BY MAIL

KNOWING THAT I CAN BE FINED NOT MORE
THAN ONE THOUSAND DOLLARS OR IMPRISONED
IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE
THAN ONE YEAR OR BOTH SUCH FINE AND IM-
PRISONMENT FOR KNOWINGLY MAKING A FALSE
STATEMENT OR REPRESENTATION HEREIN, I,
hereby declare
that I am now, or will have been a resident of the state of
West Virginia for twelve months, and of the county of
... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... 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... ... ... ... ... ... ... ......
☐ A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

☐ A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

(4) I am required to be absent from the aforementioned county in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated; I am not in any of the categories referred to in paragraph (3) above; I am required to be absent from said county during regular business hours of the clerk of the circuit court of said county throughout the period or throughout the remainder of the period of voting an absent voter's ballot by personal appearance at said office

(state reason or reasons for required absence from county on election day)

(5) I have been appointed in precinct No. in said election, which precinct is not the precinct in which I am registered to vote.

In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election, and request that such ballot or ballots be mailed to me at the following address:

(give full address for mailing purposes)

(Complete the following paragraph only if assistance will be needed in voting absent voter's ballot):

I further declare that I will need assistance in voting an absent voter's ballot for the following reasons
I hereby declare under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

Signature of Applicant

(or in case the applicant is illiterate he shall make his mark and have it witnessed on the following lines):

Mark of Applicant

Signature of Witness

If the person applying for an absent voter’s ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is physical disability, illness or injury, or is anticipated confinement in a hospital, institution or other place for medical reasons.

STATEMENT OF PHYSICIAN (CHIROPRACTOR)

I, hereby declare that I am a physician (chiropractor) duly licensed to practice in the state of; that I last examined the applicant whose signature appears on the application above on the day of, 19; and that in my opinion (strike out numbered paragraph not applicable and complete the numbered paragraph which is applicable).
(1) The applicant will, because of ____________________________

(state particulars of physical disability, illness or injury)

be unable to go to the polls on the ____________ day of

___________________________, 19______, the date of the election.

(2) The applicant will, because of ____________________________

(state for what

medical reasons)

___________________________, on or about the ____________________________

institution or other place)

day of ____________________________, 19______, and will because of

such reasons not be able to go to the polls on the__________________________

day of ____________________________, 19______, the date of the election.

(Complete the following paragraph if applicant for

absent voter's ballot will need assistance in voting such

ballot, based upon physical disability, illness or injury.)

I am of the further opinion that applicant ____________________________

(will)

___________________________, because of the aforementioned physical

(will not)

disability, illness or injury need assistance in voting an

absent voter's ballot.

___________________________

Signature of Physician (Chiropractor)

In lieu of the application for an absent voter's ballot

provided above, those persons specified in subdivision (2)

of section one of this article may use the application for

absentee ballot form recommended by and issued under

authority of The Federal Voting Assistance Act of 1955,

as amended, and any such federal postcard application

does not have to be executed pursuant to oath or attesta-

tion in the case of a voter outside the continental limits of

the United States.

Upon receipt of a properly completed copy of such form,

the clerk of the circuit court shall process it the same as

he would any other application for an absent voter's

ballot by mail. Any such properly completed copy may be
returned only to the clerk of the circuit court of the county in which the applicant is a registered voter.

Immediately upon receipt of a completed application for voting an absent voter’s ballot by mail, the clerk of the circuit court shall determine (1) whether the application for voting such ballot has been completed as required by law; (2) whether he has evidence that any of the statements contained in the application are not true; and (3) whether the applicant is in fact duly registered in the precinct of his residence as provided by law and insofar as registration is concerned would be permitted to vote at the polls in such election. If the determination of the clerk of the circuit court as to (1) or (3) is in the negative or as to (2) is in the affirmative, the clerk shall notify the applicant at the time he mails the absent voter’s ballot to him that he will challenge the applicant’s privilege to vote an absent voter’s ballot by mail for reasons which he shall indicate and, upon receipt of the applicant’s absent voter’s ballot, the clerk shall challenge such ballot.

Upon determination by the clerk of the circuit court that the applicant is entitled to vote an absent voter’s ballot by mail or that the applicant will be permitted to vote an absent voter’s ballot by mail with such ballot to be challenged by the clerk, the clerk shall between the thirtieth day and the fourth day next prior to the election in which the absent voter’s ballot is to be used mail to the applicant the following absentee voting supplies: Provided, That the clerk mail such voting supplies to an applicant whose address is shown to be outside the continental limits of the United States on the same day the application is received in the clerk’s office or on the next day thereafter that he has both an application and a ballot:

(a) One official absent voter’s ballot (or ballots if more than one are to be used) which has been prepared in accordance with law for use in such election; such ballot in the case of a primary election shall be of the party of the applicant’s affiliation as indicated on his registration
card or in the case the applicant is not found to be
registered by the clerk but votes a ballot challenged by
the clerk, the clerk shall send to the applicant an absent
voter's ballot of the party designated by the applicant in
his application.

(b) One Absent Voter's Ballot Envelope No. 1, unsealed,
which shall have no writing thereon except the designa-
tion "Absent Voter's Ballot Envelope No. 1."

(c) One Absent Voter's Ballot Envelope No. 2, unsealed.

Upon receipt of an absent voter's ballot by mail, the
voter shall mark the ballot and the voter may have
assistance in voting his absent voter's ballot in accordance
with the provisions of section six of this article.

After the voter has voted his absent voter's ballot, he
shall (1) enclose the same in Absent Voter's Ballot En-
velope No. 1, and seal that envelope, (2) enclose sealed
Absent Voter's Ballot Envelope No. 1 in Absent Voter's
Ballot Envelope No. 2 and seal that envelope, (3) com-
plete and sign the forms, if any, on Absent Voter's Ballot
Envelope No. 2 according to the instructions thereon, and
(4) mail, postage prepaid, sealed Absent Voter's Ballot
Envelope No. 2 to the clerk of the circuit court of the
county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall
(1) enter onto the envelope such information as may be
required of him according to the instructions thereon; (2)
enter his challenge, if any, to the absent voter's ballot;
(3) enter the required information into a record of per-
sons making application for and voting an absent voter's
ballot by personal appearance or by mail (the form of
which record and the information to be entered therein
shall be prescribed by the secretary of state); and (4)
place such sealed envelope in a secure location in his
office, there to remain until delivered to the polling place
in accordance with the provisions of this article or, in case
of a challenged ballot, to the county commission sitting as
a board of canvassers.
AN ACT to amend and reenact section nineteen, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conducting electronic voting system elections generally; duties of election officers; deposit of ballot in ballot box.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

1. (1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than three minutes.

2. (2) In primary elections, before a voter is permitted to occupy the voting booth, the election officer representing the party to which the voter belongs shall direct the voter to the vote recording device which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

3. (3) The election officers shall issue to each voter when he signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election officer in charge of the vote recording device.

4. (4) One hour before the opening of the polls the precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers, open the vote recording devices, place them in the voting booths, and examine them to see that they have the
correct ballots or ballot labels by comparing them with the
sample ballots, and are in proper working order. They shall
open and check the ballots, ballot cards, supplies, records and
forms, and post the sample ballots or ballot labels and
instructions to voters.

(5) Each voter shall be instructed how to operate the vote
recording device before he enters the voting booth.

(6) Any voter who shall spoil, deface or mutilate the ballot
or ballot card delivered to him, on returning the same to the
poll clerks, shall receive another in place thereof. Every
person who does not vote any ballot or ballot card delivered
to him shall, before leaving the election room return such
ballot or ballot card to the poll clerks. When a spoiled or
defaced ballot or ballot card is returned, the poll clerks shall
make a minute of the fact on the pollbooks, at the time, and
the word “spoiled” shall be written across the face of the
ballot or ballot card and it shall be placed in an envelope for
spoiled ballots or ballot cards.

Immediately on closing the polls, the election
commissioners shall ascertain the number of spoiled ballots
or ballot cards during the election and the number of ballots
or ballot cards remaining not voted. The election
commissioners shall also ascertain from the pollbooks the
number of persons who voted and shall report, over their
signatures, to the clerk of the county commission, the
number of ballots or ballot cards cast, the number of ballots
or ballot cards spoiled during the election and the number of
ballots or ballot cards unused. All unused ballots or ballot
cards shall at the same time be returned to the clerk of the
county commission, who shall immediately destroy them by
fire or otherwise.

Each commissioner who is a member of an election board
which fails to account for every ballot or ballot card delivered
to it shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than one thousand dollars or
confined in the county jail for not more than one year, or both.

The board of ballot commissioners of each county, or the
chairman thereof, shall preserve the ballots or ballot cards
that are left over in their hands, after supplying the precincts
as provided, until the close of the polls on the day of election,
62 and such ballots or ballot cards, shall then be destroyed by such board, or the chairman thereof, by fire or otherwise.

64 (7) Where ballot cards are used, the voter, after he has marked his ballot card, shall, before leaving the voting booth, place the ballot card inside the envelope provided for this purpose, with the stub extending outside said envelope, and return it to an election officer who shall remove the stub and deposit the envelope with the ballot card inside in the ballot box, or if manila sleeve envelopes are used, the ballot shall be deposited in the ballot box in such a way that the sleeve envelope remains outside the ballot box while the ballot slides into the ballot box. No ballot from which the stub has been detached shall be accepted by the officer in charge of the ballot box, but it shall be marked “spoiled” and placed with the spoiled ballots.

77 (8) The precinct election officers shall prepare a report in quadruplicate of the number of voters who have voted, as indicated by the pollbooks, and shall place two copies of this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the election officers so that no additional ballots may be deposited or removed from the ballot box. Two election officers of different political parties shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed numbered receipt therefor, and the time of their departure from the polling place shall be noted on the two remaining copies of the report, which shall be immediately mailed to the clerk of the county commission.

90 (9) The pollbooks, register of voters, unused ballots or ballot cards, spoiled ballots or ballot cards and other records and supplies shall be delivered to the clerk of the county commission.

CHAPTER 106
(S. B. 343—By Mr. Palumbo)

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

AN ACT to amend and reenact section twenty-four, article four-a, chapter three of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to voting by challenged voter; recording devices that do not tabulate challenged voters as individual votes; use of printed ballots.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.


1 If the right of any person to vote be challenged in accordance with provisions of article one of this chapter relating to the challenging of voters, and a vote recording device is used that tabulates the vote as an individual vote, such person shall be permitted to cast his vote by use of the vote recording device. If the voting device does not tabulate the vote as an individual vote, such person shall not be permitted to cast his vote by use of the vote recording device but he shall be supplied by the election officer at the polling place with an official printed ballot of such election. Such ballot shall not be endorsed on the back by the poll clerks but, when voted by the challenged voter, shall have affixed thereto by the poll clerks their statement of information as to the challenge on the form prescribed therefor. Such challenged ballots shall be secured, handled and disposed of as challenged ballots in other elections, as provided in article one of this chapter.

CHAPTER 107
(H. B. 1030—By Mr. Prunty)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to election recounts; requiring open meetings of boards of canvassers; providing that a can-
didate served with notice of recount by another candidate may
demand a recount of precincts not included in the notice of
recount.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; declaration of results; recounts; record-
keeping.

The commissioners of the county commission shall be ex
officio a board of canvassers, and, as such, shall keep in a
well-bound book, marked “election record,” a complete record
of all their proceedings in ascertaining and declaring the re-
results of every election in their respective counties. They
shall convene as the canvassing board at the courthouse on the
fifth day (Sundays excepted) after every election held in their
county, or in any district thereof, and the officers in whose
custody the ballots, pollbooks, registration records, tally sheets
and certificates have been placed shall lay them before the
board for examination. They may, if considered necessary,
require the attendance of any of the commissioners, poll
clerks or other persons present at the election, to appear and
testify respecting the same, and make such other orders as
shall seem proper to procure correct returns and ascertain
the true results of the election in their county; but in this
case all the questions to the witnesses and all the answers
thereto, and evidence, shall be taken down in writing and filed
and preserved. All orders made shall be entered upon the
record. They may adjourn from time to time, but no longer
than absolutely necessary, and, when a majority of the com-
missioners are not present, their meeting shall stand ad-
journed until the next day, and so from day to day, until
a quorum is present. All meetings of the commissioners
sitting as a board of canvassers shall be open to the public.
The board shall proceed to open each sealed package of
ballots so laid before them, and, without unfolding them,
count the number in each package and enter the number upon their record. The ballots shall then be again sealed up care-
fully in a new envelope, and each member of the board shall
write his name across the place where the envelope is sealed.
After canvassing the returns of the election, the board shall
publicly declare the results of the election; however, they
shall not enter an order certifying the election results for a
period of forty-eight hours after the declaration.

(a) Within the forty-eight hour period a candidate voted for at the election may demand the board to open and examine any of the sealed packages of ballots, and recount them; but in such case they shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his name across the places where it is sealed, and endorse in ink, on the outside: "Ballots of the election held at precinct No.______, in the district of ______________, and county of ________________, on the ______ day of _________." In computing the forty-eight hour period as used in this section, Saturdays, Sundays and legal holidays shall be excluded: Provided, That at the end of the forty-eight-hour period, an order shall be entered certifying all election results except for those offices in which a recount has been demanded.

(b) If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the forty-eight-hour period, in which to send notice to all candidates who filed for the office in which a recount has been demanded, of the date, time and place where the board will convene to commence the recount. The notice shall be served under the provisions of subdivision (c) of this section. The recount shall be set for no sooner than three days after the serving of the notice: Provided, That after the notice is served, candidates so served shall have an additional twenty-four hours in which to notify the board, in writing, of their intention to preserve their right to demand a recount of precincts not requested to be recounted by the candidate originally requesting a recount of ballots cast: Provided, however, That there shall be only one recount of each precinct, regardless of the number
of requests for a recount of any precinct. A demand for the recount of ballots cast at any precinct may be made during the recount proceedings only by the candidate originally requesting the recount and those candidates who notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a recount of additional precincts.

(c) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate, and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his family and above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there, and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure so to do, he shall forfeit twenty dollars. The return shall be evidence of the manner and time of service.

(d) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts from whom they were received, who shall carefully preserve them for sixty days, and if there is no contest pending as to any election, and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there is a contest pending, then they shall be so destroyed as soon as the contest is ended:
Provided, That the pollbooks shall be preserved until such time as the clerk of the county commission has completed the duties imposed upon him by section three, article two of this chapter. If the result of the election is not changed by the recount, the costs and expenses thereof shall be paid by the party at whose instance the recount was made.

CHAPTER 108
(S. B. 404—By Mr. Wright)

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

AN ACT to amend and reenact section eleven, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring county commissioners, as the board of canvassers in certain elections, to transmit copies of certificates of election of delegates, state senators and certain other state and federal officers to the secretary of state and the governor, as the case may be, within thirty days from the date of the election.

Be it enacted by the Legislature of West Virginia:
That section eleven, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.
§3-6-11. Disposition of certificates.
1 The separate certificates of the board of canvassers, made pursuant to section ten of this article, shall be disposed of by the board of canvassers as follows: Of the certificates respecting the election for delegate or delegates in the Legislature, they shall transmit one to each person voted for as delegate and shall transmit one to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, who shall submit the same to the House of Delegates, on the first day of the next ensuing session, together with a list of the persons appearing thereby
to be elected. Of the certificates respecting the election of state senator, they shall transmit one to each person voted for as state senator and shall transmit one to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, to be submitted by him to the Senate, on the first day of the next ensuing session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of state officers, one, as to each of such officers, except justice of the supreme court of appeals, shall be sealed and transmitted by such commissioners to the secretary of state within thirty days from the date of the election endorsed on the envelope as follows: "Returns of the election for state officers." Except that in the case of a recount, the certificates shall be transmitted within thirty days from the date of the completion of the recount. The secretary of state shall deliver the same to the speaker of the House of Delegates, on the first day of the next session of the Legislature; and the speaker shall, immediately after the organization of the House of Delegates and before proceeding to other business, open and publish the same, in the presence of a majority of each house of the Legislature, which bodies shall, for that purpose, assemble in the hall of the House of Delegates. The person having the highest number of votes for any one of such offices shall be declared duly elected thereto; but if two or more persons have the same and the highest number of votes for the same office, the Legislature shall, by a joint vote of the two houses, choose one of said persons for such office; and one of each of such last-mentioned certificates shall also be transmitted, under seal, to the governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the same to be printed in some newspaper published at the seat of government. Of the certificates respecting the election for United States senator, member of the House of Representatives in the Congress of the United States, justice of the supreme court of appeals, judge of a circuit court, and president and vice president of the United States, respectively, the commissioners shall transmit one in each case to the person voted for and one to the governor within thirty days from the date of the election; except that in the case of a recount, within thirty days from the date of the
completion of the recount; and the governor shall ascertain who are elected and make proclamation thereof. Of the certificates respecting the election of all county and district officers, one shall be transmitted to each person for whom votes were cast.

CHAPTER 109
(S. B. 35—By Mr. Steptoe)
[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.] AN ACT to amend and reenact sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to condemnation proceedings generally; increasing from six percent to ten percent the interest rate heretofore applicable on sums initially payable into court prior to a condemnation award, on awards exceeding an original payment into court, and on awards in which the condemnor fails to give proper notice; providing for payment of ten percent interest on the determined amount of compensation and damages payable when a business corporation applicant takes legal entry upon or possession of property during a condemnation proceeding; providing for interest to be paid from the date of the filing of the petition; requiring the state and political subdivisions to pay into court the fair value of the property to be taken before entry; and applying the increased rate only to condemnation proceedings instituted after the effective date of this act.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:
ARTICLE 2. PROCEDURE.

§54-2-12. Vesting of title in applicant.
§54-2-13. Entry on land on payment of compensation.
§54-2-14. Entry by state or its political subdivisions.
§54-2-14a. Alternative method for condemnation by state or its political subdivision.
§54-2-16. Increase or decrease in award after payment into court; costs.
§54-2-18. Payment to clerk; disposition of money paid into court; determination of conflicting claims; notice to condemnee.
§54-2-21. Effective date of new percent interest rates.

§54-2-12. Vesting of title in applicant.

Except as otherwise provided in this article, at any time within three months after the report, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, the sum so ascertained with ten percent interest thereon from the date of the filing of the petition until payment, may be paid by the applicant into court; upon such payment, title to the property, or interest or right therein, so paid for shall be absolutely vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right-of-way only shall absolutely vest in the applicant.

§54-2-13. Entry on land on payment of compensation.

After such report has once been made, whether it be set aside, recommitted, or new commissioners appointed, or not, or whether a trial by jury be demanded and had or not, the applicant upon paying into court the sum ascertained by such report, with ten percent interest thereon from the date of the filing of the petition until payment, may, notwithstanding the pendency of further proceedings, enter upon, take and use for the purposes specified in the application, that part of the land and property in respect to which such payment is made, and where such payment has been made and possession taken, or where payment has been made without taking such possession in a pending case, it shall have the same effect as if such payment were made or possession taken, or both, in a case hereafter commenced; and no order shall be made or any injunction awarded by any court or judge to stay it in so doing, unless it be manifest that the applicant is insolvent or that it or its officers, agents or servants, are transcending their authority, or that such interposition is necessary to prevent
injury which cannot be adequately compensated in damages:

Provided, That if the applicant be other than a corporate body politic, before entering upon or taking possession of such property, it shall enter into bond before the court, or judge thereof in vacation, in a penalty prescribed by the judge, with securities approved by him, conditioned for the payment to the owner of any additional sums which may be awarded against it in subsequent proceedings as additional compensation and damages for the property so taken.

And where, under authority of section ten, article one of this chapter, wood, earth, gravel, shale, stone, water or other material are sought to be taken, impounded or consumed, the applicant, after such report has been made, whether it be set aside, recommitted or new commissioners appointed, or not, or whether a trial by jury be demanded and had, or not, may, upon payment into court as aforesaid of the sum ascertained by the report of such commissioners, notwithstanding the pendency of further proceedings, take, impound or consume such wood, earth, gravel, shale, stone, water or other material; and all the foregoing provisions of this section as to injunction and bond shall be applicable to such case.

§54-2-14. Entry by state or its political subdivisions.

If the applicant be the state of West Virginia, or any political subdivision thereof, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the land or property is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the court or judge shall, at the request of the applicant, make an order permitting the applicant at once to enter upon, take possession, appropriate and use the land sought to be condemned for the purposes stated in the petition. The revenues applicable to the payment of any damages or compensation to which the owner is entitled, and which shall be awarded or assessed in his favor, shall be deemed sufficient security and to have been pledged for such payment, and no bond or further security shall be required of the applicant.

If the applicant shall enter upon or take possession of property under the authority of this section, and shall do any work thereon and injure such land or property, it shall not be
entitled, without the consent of the defendant, to abandon the proceedings for the condemnation thereof, but such proceedings shall proceed to final award or judgment, and the applicant shall pay to the owner of the land the amount of compensation and damages as finally determined in such proceedings, with interest at ten percent from the date of the filing of the petition.

Before entry, taking possession, appropriation, or use, the applicant shall pay into court such sum as it shall estimate to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, including, where applicable, the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking.

When, after payment into court as provided under the authority of this section, the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, exceeds the amount which has been paid into court, the excess amount, together with interest thereon at ten percent from the date of the filing of the petition to the date of payment of the excess amount into court, may, at any time within three months after the report or verdict of a jury, as the case may be, has been confirmed and ordered to be recorded, be paid into court by the applicant for the persons entitled thereto.

If the amount which has been paid into court pursuant to this section exceeds the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, the excess shall be repaid to the applicant out of such fund in court, or, if the amount remaining in the fund be insufficient, then the persons to whom the fund, or any part thereof, has been paid, shall reimburse the applicant, on a pro rata basis, but without interest.

If the amount allowed by the report of the condemnation commissioners, or the verdict of the jury, if there be one, does not exceed the sum paid into court and it shall appear that the latter amount was tendered by the applicant to the defendant prior to the institution of the proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal to accept the tender was based on some ground other than that of insufficiency of compensation and any damages.
§54-2-14a. Alternative method for condemnation by state or its political subdivision.

Prior to any report by condemnation commissioners, or verdict of a jury, if the applicant be the state of West Virginia or any political subdivision thereof, and be otherwise authorized by law to make payment as required in this section, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the property or interest or right therein, is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the applicant may thereupon acquire title to, and enter upon, take possession of, appropriate and use the property, or interest or right therein, sought to be condemned for the purposes stated in the petition by following the method provided in this section.

Before entry, taking possession, appropriation, or use, the applicant shall pay into court such sum as it shall estimate to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, including, where applicable, the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking. The court or judge may, at the request of any party to the proceeding, require the clerk of the court to give an additional bond, adequate to protect such deposit with the clerk; and if such bond is required, the applicant shall pay the necessary premiums.

Upon such payment into court, the title to the property, or interest or right therein, sought to be condemned, shall be vested in the applicant, and the court or judge shall, at the request of the applicant, make an order permitting the applicant at once to enter upon, take possession, appropriate and use the property, or interest or right therein, sought to be condemned for the purposes stated in the petition, but the owners of such property, or interest or right therein, at the time of such payment, including lienors and conflicting claimants, shall have such title, interest, or right in the money paid into court as they had in the property, or interest or right therein, sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon such property, or interest or right therein, shall be transferred to such fund in court, subject to the provisions of this section. The title in the
applicant shall be defeasible until the compensation and any
damages are determined in the condemnation proceedings
and the applicant has paid any excess amount into court.

Upon petition to the court or judge, any person entitled
thereunto may be paid his pro rata share of the money paid into
court, or a portion thereof, as ordered by the court or judge,
but the acceptance of such payment shall not limit the
amount to be allowed by the report of the condemnation
commissioners, or the verdict of a jury, if there be one.

Proceedings for the distribution of the money so paid into
court shall be conducted as provided in section eighteen of
this article to the extent that the provisions therein are
applicable. No party to the condemnation proceeding shall be
permitted to introduce evidence of such payment or of the
amount so paid into court, or of any amount which has been
accepted by any party, nor shall reference be made thereto
during the course of the trial.

If the applicant shall enter upon or take possession of the
property, under the authority of this section, and shall injure
the property, the applicant shall not be entitled, without the
consent of the defendant, to abandon the proceeding for the
condemnation thereof, but such proceeding shall proceed to
final award or judgment, and the amount of compensation
and any damages as finally determined in such proceeding
shall be paid in the manner provided by this section.

When, after payment into court as provided under the
authority of this section, the amount allowed by the report of
the condemnation commissioners, or the verdict of a jury, if
there be one, exceeds the amount which has been paid into
court, the excess amount, together with interest thereon at
ten percent from the date of the filing of the petition to the
date of payment of the excess amount into court, may, at any
time within three months after the report or verdict of a jury,
as the case may be, has been confirmed and ordered to be
recorded, be paid into court by the applicant for the persons
entitled thereto. In no other instance shall interest be allowed
on payments made pursuant to the provisions of this section.

If the amount which has been paid into court pursuant to this
section exceeds the amount allowed by the report of the
condemnation commissioners, or the verdict of a jury, if there
be one, the excess shall be repaid to the applicant out of such
fund in court, or, if the amount remaining in the fund be insufficient, then the persons to whom the fund, or any part thereof, has been paid, shall reimburse the applicant, on a pro rata basis, but without interest. If the applicant has the right to abandon the proceeding and does so, the amount which has been paid into court pursuant to this section shall be repaid to the applicant from such fund in court and by any persons to whom the fund, or any part thereof, has been paid, on a pro rata basis, but without interest.

If the amount allowed by the report of the condemnation commissioners, or the verdict of the jury, if there be one, does not exceed the sum paid into court and it shall appear that the latter amount was tendered by the applicant to the defendant prior to the institution of the proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal to accept the tender was based on some ground other than that of insufficiency of compensation and any damages.

When the report of the condemnation commissioners, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, and the excess amount, if any, has been paid into court as provided herein, the title to the property, or interest or right therein, so paid for shall be absolutely and indefeasibly vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right-of-way only shall absolutely vest in the applicant.


Any business corporation, entitled to exercise the powers of eminent domain under this chapter, may file with its petition a bond for a sufficient amount with good sureties, payable to the owner of the property proposed to be taken to secure to such owner payment for such property and all damages to which he shall be entitled for the taking thereof, and if the owner being sui juris shall appear and make no objection to such bond, the applicant shall be entitled to take possession of the property sought to be condemned, for the purposes stated in the petition. But if objection be made to the form, amount of, or sureties on, such bond, or if the owner cannot be found, or is not sui juris, the court or judge shall fix a day for the hearing of any objections to such bond and of the
request of the applicant to approve the same; and at any time
after five days' written notice shall have been given to the
owner or to his guardian or committee, if he be not sui juris,
and if the owner cannot be found, or his guardian or
committee, the owner not being sui juris, then, after five days'
written notice posted upon the land, which notice shall state
the time and place for such hearing, the court or the judge
shall proceed to hear and determine the matters arising upon
such objection and request, and may require evidence as to
the sufficiency of the surety or sureties and as to the
sufficiency of the amount of the bond, and may, in its or his
discretion, require new and additional sureties and a bond for
a larger amount and in a more satisfactory form, and when
satisfied as to the form, amount and sufficiency of such bond
and sureties, and that the purpose for which the property is to
be appropriated is a public use for which private property
may be taken compensating the owner, the court or
judge shall approve the bond and make an order permitting
the applicant to enter upon, take possession, appropriate and
use the land or property sought to be condemned for the
purposes stated in the petition. At any time during the
subsequent proceedings on such petition, if it shall appear
necessary so to do in order to protect the owner and assure
unto him the payment of the compensation and damages to
which he may be entitled, the court or judge may require the
applicant to give a new and additional bond with sureties
satisfactory to the court or judge.

Any indemnity company authorized to transact business in
the state of West Virginia shall be deemed a good and
sufficient surety on any bond required under this section.

If the applicant shall enter upon or take possession of the
property under the provisions of this section, and shall do any
work thereon, or cause any injury or damage to such
property, it shall not thereafter be entitled, without the
consent of the defendant, to abandon the proceeding for the
condemnation thereof, but the same shall proceed with
reasonable dispatch to a finality and the applicant shall pay to
the owner of the land the amount of the compensation and
damages as finally determined in such proceedings, with
interest at ten percent from the date of the filing of the
petition.
§54-2-16. Increase or decrease in award after payment into court; costs.

When, after such payment into court as is mentioned in section thirteen of this article a subsequent report is made which is confirmed and ordered to be recorded, or the verdict of a jury is found, if the sum ascertained by such subsequent report or verdict exceed what was so paid, and the applicant fail to pay the same, judgment shall be given against it for the amount of such excess, with ten percent interest thereon from the date of filing of the petition until payment; but if what was so paid exceeds the sum ascertained by such subsequent report or verdict, the excess shall be repaid to the applicant out of the fund in court, or by the persons to whom the same shall have been paid. If the sum ascertained by such subsequent report or verdict does not exceed the sum ascertained by the former report, the party on whose motion the former report was set aside, recommitted, or other commissioners appointed, or trial by jury demanded, if he be a defendant therein, shall pay the costs occasioned by such motion, unless such former report was set aside, recommitted or other commissioners appointed on some other ground than that of insufficiency of compensation.

If the applicant has stated in his application the sum of money which he is ready to pay to the owners for any parcel of land proposed to be taken, and it appear by a report confirmed and ordered to be recorded, or by a verdict of a jury, that he is entitled to take such parcel for the purpose mentioned in his application without paying any greater compensation therefor, he shall be adjudged his costs in respect to such parcel, out of the compensation to be paid therefor to the owners.

In cases not otherwise provided for, the applicant shall pay the costs of the proceedings.

§54-2-18. Payment to clerk; disposition of money paid into court; determination of conflicting claims; notice to condemnee.

Payment of an award or judgment, or any money, under any of the provisions of this chapter may be made to the clerk of the court in which such proceeding is had, and such pay-
ment shall be deemed to be a payment into court. Within ten
days after the payment of an award, judgment or money into
court pursuant to the provisions of this chapter, the condem-
nor shall serve notice upon the parties of record except non-
residents and unknown parties whose interests the applicant
seeks to condemn, or upon their counsel of record. Service of
notice by registered or certified mail to the parties' last-
known addresses shall be deemed sufficient. Notwithstand-
ing any other provision of this chapter to the contrary, failure
to serve such notice shall result in the accrual of interest at
ten percent upon the award, judgment or money paid into
court from the filing of the petition until such notice is served
or until disbursement be made to the persons entitled thereto.
The clerk to whom payment is so made, together with the
surety on his official bond, shall be liable therefor, as for other
moneys collected by him by virtue of his office.

Upon money being paid into court, pursuant to the provi-
sions of this chapter, and the court or judge being satisfied
that the persons entitled thereto are before the court or judge,
it or he shall make such distribution or disposition of such
money as is proper, having due regard to the interest of all
persons therein, and in what proportions such money is
properly payable.

If it shall appear that the petition states the persons or
classes of persons, who, in the opinion of the applicant, are
vested with the superior right or claim of title in the property,
or interest or right therein, condemned or sought to be con-
demned or in the amount allowed or to be allowed by the
report of the condemnation commissioners, or the verdict of a
jury, if there be one, and it does not appear from the record or
otherwise that there is any denial or dispute, by any person or
party in interest, of such statement in the petition, the court
or judge may direct that the money paid into court, after
withholding therefrom any sum necessary for payment of any
taxes which are a lien upon the property, interest, or right, be
disbursed and distributed in accordance with the statement
in the petition, among the persons entitled thereto, except
that with respect to any persons appearing to be infants,
incompetents, incarcerated convicts, or under any other legal
disability, the court or judge shall inquire into their rights or
claims, independent of any statement in the petition, and any
order for disbursement or distribution shall conserve and
protect the rights or claims of such persons in and to the
money paid into court.

If it shall appear to the court or judge, from the record or
otherwise, that there exists a controversy among claimants to
the money paid into court, or to the ownership of the prop-
erty, or interest or right therein, condemned or sought to be
condemned, the court or judge shall enter an order setting a
time for hearing the case and determining the rights and
claims of all persons entitled to the money paid into court or
to any interest or share therein. To aid in properly disposing
of the money, the court or judge may appoint a commissioner
to take evidence of the conflicting claims. The court or judge
may direct publication to be made requiring all who are in-
terested to appear at the time set for hearing the case to
present their respective claims. Such costs shall be allowed to
the prevailing persons as the court or judge shall direct. Upon
a determination by the court or judge of the rights and claims
of the persons entitled to the money paid into court, with or
without a report of such commissioner, judgment shall be
entered directing the disbursement or distribution, after
withholding for taxes as provided in the next preceding
paragraph, to the persons entitled thereto, provided that the
rights or claims of persons under legal disability shall be
protected as provided in the next preceding paragraph.

§54-2-21. **Effective date of new percent interest rates.**

The percent interest rate provided for in sections twelve,
thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen of
this article, shall be applicable only to condemnation pro-
ceedings hereafter instituted. The rate of interest previously
applicable to proceedings under the above sections shall con-
tinue to be applicable to condemnation proceedings hereto-
fore instituted.

**CHAPTER 110**

(5. I. 384—By Mr. Huffman)

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

AN ACT to amend and reenact section nineteen, article two,
chapter fifty-four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the compensation of commissioners in eminent domain proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROCEDURE.


1 Each commissioner shall receive as compensation for services in each eminent domain proceeding a reasonable amount to be fixed by an order entered of record in the proceeding, said compensation not to exceed the sum of fifty dollars per day to be taxed as a part of the costs of the proceeding.

7 The jurors shall receive the same compensation fixed by law for jurors in felony cases, to be taxed as a part of the costs of the proceeding.
ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20. When survivorship preserved.

1. (a) The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended that the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

2. (b) When the instrument of conveyance or ownership in any estate, whether real estate or tangible or intangible personal property, links multiple owners together with the disjunctive "or," such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated otherwise.

Chapter 112

(Com. Sub. for H. B. 982—By Mr. Tompkins)

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

AN ACT to amend and reenact section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of debts of a decedent and the order of priority of payment of such debts; and providing for the payment of funeral expenses of a deceased wife from the assets of her estate notwithstanding the surviving husband's ability to pay such debts.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-21. Order in which debts of decedent to be paid.

When the assets of the decedent in the hands of his personal representative, after the payment of charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied in the following order:

(a) To the payment of funeral expenses, to an amount not exceeding six hundred dollars: Provided, That the reasonable and necessary funeral and burial expenses, including expenses for monuments and all other expenses of like nature, incident to a deceased wife shall be payable by the personal representative out of the assets of her estate irrespective of any other provision of this code or of other rule of law and all such expenses shall be allowed as a charge of administration pursuant to the provisions of sections five and six of this article, and shall likewise be allowed as deductions against the assets of such estate pursuant to the provisions of article eleven, chapter eleven of this code.

(b) To the claims of physicians, not exceeding one hundred dollars, for services rendered during the last illness of the decedent; and accounts of druggists, not exceeding the same amount, for articles furnished during the same period; and claims of professional nurses or other person rendering service as nurse to the decedent, at his request or the request of some member of his immediate family, not exceeding the same amount, for services rendered during the same period; and accounts of hospitals and sanitariums, not exceeding the same amount, for articles furnished and services rendered during the same period;

(c) To debts due the United States;

(d) To debts due this state;

(e) To taxes and levies assessed upon the decedent previous to his death;

(f) To debts due as trustee for persons under disabilities, as receiver or commissioner under decree of court of this state,
as personal representative, guardian, committee, or other fiduciary, where the qualification was in this state;

(g) To the balances on any items listed in subdivisions (a) and (b) hereof and to all other demands except those in the next class;

(h) To voluntary obligations.

CHAPTER 113

(Com. Sub. for S. B. 421—By Mr. Tonkovich)

[Passed April 11, 1981; in effect ninety days from passage. Approved by the Governor.]
Chapter 44. Administration of Estates and Trusts.
27. Mentally Ill Persons.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED PERSONS.

§44-10A-1. Guardianship of mentally retarded and mentally handicapped persons generally.

1. When it shall appear to the satisfaction of the county commission that a person is a mentally retarded person as defined in section three, article one, chapter twenty-seven of this code, or is otherwise mentally handicapped, that such condition is certified as being permanent in nature by at least two physicians licensed to practice medicine in this state or one such physician and one licensed psychologist having qualifications to make such certification, and that such person requires in his best interests the appointment of a guardian, the county commission is authorized, upon compliance with the procedures described in section one, article eleven, chapter twenty-seven of this code, to appoint a guardian and to specify the powers and duties the guardian shall exercise for the person of such person, the estate of such person, and any moneys from any source as may be paid on behalf of such person to the guardian or to another party.

2. For the purposes of this chapter, "mentally handicapped person" shall mean any person with a condition medically determined which results in a substantial mental impairment of general intellectual functioning and which results in that person's inability to function normally in society for his own best interests.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

1. (a) The county commission of a person's residence may appoint a committee for a person found to be incompetent.

2. Any finding of incompetency under this article shall be
made separately and at a different proceeding from any finding of mental illness, mental retardation or addiction under article four or five of this chapter.

(b) Proceedings for the appointment of a committee for an alleged incompetent may be commenced by the filing of a verified petition of a person setting forth the facts showing the incompetency of an individual with the county commission. Upon receipt of a petition, the clerk of the county commission shall give notice of the hearing thereon to the individual and to the individual's spouse, or if the individual does not have a spouse, to the individual's adult next of kin: Provided, That such person shall not be the petitioner: Provided, however, That such individual shall be served with notice of such hearing by delivering unto such individual in person written notice thereof together with a true copy of such verified petition, which notice shall be served upon the individual alleged to be incompetent at least ten days before the time of such hearing.

Such individual alleged to be incompetent shall be accorded the right to subpoena witnesses, to be confronted with witnesses and the right to cross-examine witnesses which may be offered against him, and the county commission on or before the commencement of such hearing shall appoint a competent attorney practicing before the bar of the circuit court of the county wherein such hearing is to be held as guardian ad litem for the purpose of representing the interest of such individual throughout such proceedings under this section. Notwithstanding any requirement hereof to the contrary such hearing may proceed without the presence of the individual alleged to be incompetent if (1) proper notice has been served upon the party alleged to be incompetent as required herein, and (2) a duly licensed physician shall have certified in writing and upon affidavit that he or she has examined such individual and that such individual is physically unable to appear at such hearing or that such an appearance would likely impair or endanger the health of such individual, or (3) such individual refuses to appear, and (4) upon the specific written findings by such commission
of facts as will justify a hearing without the presence of such individual as provided in this subsection.

(c) A record shall be made of all proceedings either by the court reporter for the circuit court of that county or some other person employed by the county commission for the purpose. A transcript shall be made available to the individual or his counsel within thirty days if the same is requested for purposes of appeal. In any case wherein an indigent person seeks an appeal, the circuit court shall by order entered of record authorize and direct the person making the record of the proceeding to furnish a transcript of the hearing, and the cost of said transcript shall be paid by the county commission from funds appropriated for this purpose.

(d) Upon completion of the hearing and upon the evidence presented therein the county commission may find that (i) the individual is unable to manage his business affairs, or (ii) the individual is unable to care for his physical well-being, or (iii) both, and is therefore incompetent, or (iv) that the person is competent. Evidence of mere poor judgment or of different life style shall not be competent evidence upon which to base a finding of incompetency.

(1) “Unable to manage one’s business affairs” means the inability to know and appreciate the nature and effect of his business transactions, notwithstanding the fact that he may display poor judgment.

(2) “Unable to care for one’s physical well-being” means the substantial risk of physical harm to himself as evidenced by conduct demonstrating that he is dangerous to himself, notwithstanding the fact that he may display poor judgment.

If the county commission finds the person to be competent, the proceedings shall be dismissed. No appointment of a committee shall be made on evidence which is uncorroborated by the testimony of a medical expert or by a certified statement upon affidavit as hereinafter provided. If the individual refuses to submit to an examina-
tion by a physician, the circuit court may upon petition, issue a rule against the individual to show cause why the individual should not submit to an examination. A copy of the petition shall accompany service of the rule and such rule shall be returnable at a time to be fixed by the court. Any physician duly licensed to practice medicine in the state who is currently treating the individual alleged to be incompetent may file with the county commission his certified statement upon affidavit stating that he is currently treating said individual and setting forth his opinion of the individual’s ability to (i) manage his business affairs and (ii) care for his physical well-being, and stating in detail the grounds for such opinion. Such statement may be considered by the county commission as evidence in the case: Provided, That the circuit court upon the petition of the attorney or guardian ad litem for the alleged incompetent shall issue a subpoena for the treating physician as a witness at the proceeding.

(e) The extent of the committee's authority shall be specified in the order of the county commission. No authority of a committee shall extend beyond what is necessary for the protection of the individual. A finding of inability to care for one’s physical well-being shall entitle the committee to custody of the individual, except when the individual is under a commitment order to a mental health facility, but only to the extent as is necessary for the protection of the individual.

(f) An individual found incompetent pursuant to subsection (d) of this section shall have the right to an appeal and hearing thereon in the circuit court of the county. The judge shall hear the matter on appeal as provided in article three, chapter fifty-eight of this code or order a hearing de novo on the matter.

(g) The individual or any person may apply to the county commission in the manner provided by subsection (b) of this section for termination of his committee at any time and appeal from a determination thereon in the manner provided by this section or in the alternative, the individual may seek such termination by habeas corpus.
AN ACT to repeal section seven-a, article three, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter thirty-six of said code by adding thereto a new section, designated section twenty-a, relating to elimination of the need for a straw party in creating a joint tenancy with right of survivorship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20a. Elimination of need for straw party in creating joint tenancy with right of survivorship.

Any conveyance or transfer of property, or any interest therein, creating a joint tenancy with right of survivorship together with the person or persons conveying or transferring such property, executed by such person or persons to or in favor of another shall be valid to the same extent as a similar transfer or conveyance from a third party or by a straw party deed.
evidence of handwriting for comparison with disputed writing; and eliminating the requirement that handwriting exemplars be taken under the supervision of a circuit judge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WRITINGS AND STATEMENTS OF PRIVATE PERSONS.

§57-2-1. Handwriting analysis.

1 In any civil or criminal action or proceeding, any writing proved to the satisfaction of the judge of a court of record in an in-camera hearing to be in the handwriting of the person who is alleged to have written it, whether or not made in the ordinary course of business, may, if the court further finds that its probative value outweighs its prejudicial effect, be admitted into evidence for the purpose of making a comparison with a disputed writing on the issue of whether or not the disputed writing is genuine. The authenticity of each writing shall be finally determined by the trier of fact.

CHAPTER 116
(S. B. 707-S—By Mr. Boettner)

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

AN ACT to amend article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto ten new sections, designated sections four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, relating to evidence and witnesses; production of writings; and use of hospital records in trials and administrative hearings.

Be it enacted by the Legislature of West Virginia:

That article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto ten new sections, designated sections four-a, four-b, four-c, four-d, four-e, four-f, four-g, four-h, four-i and four-j, to read as follows:

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

§57-5-4a. Hospital records; definitions.

§57-5-4b. Hospital records; furnishing copies in compliance with subpoenas.

§57-5-4c. Hospital records; sealing, identification and direction of copies.

§57-5-4d. Hospital records; opening of sealed envelopes.

§57-5-4e. Hospital records; custodian's affidavit; charges.

§57-5-4f. Hospital records; admissibility of copies and affidavits.

§57-5-4g. Hospital records; obtaining personal attendance of custodian.

§57-5-4h. Hospital records; obtaining personal attendance of custodian and production of original record.

§57-5-4i. Hospital records; substitution of copies after introduction of originals.

§57-5-4j. Hospital records; evidence of reasonableness of medical expenses.

§57-5-4a. Hospital records; definitions.

1 As used in sections four-a to four-j in this article the following terms shall have the respective meanings ascribed thereto:

2 (a) "Records" means and includes without restriction, those medical histories, records, reports, summaries, diagnoses, and prognoses, records of treatment and medication ordered and given, notes, entries, X-rays, and other written or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care. Such records shall not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution.

3 (b) "Custodian" means and includes the medical record librarian and the administrator or other chief officer of a duly licensed hospital in this state and its proprietor, as well as their deputies and assistants and any other persons who are official custodians or depositories of records.

§57-5-4b. Hospital records; furnishing copies in compliance with subpoenas.

1 Except as hereinafter provided, when a subpoena duces
técum is served upon a custodian of records of any hos-
pital duly licensed under the laws of this state in an
action or proceeding in which the hospital is neither a
party nor the place where any cause of action is alleged
to have arisen and such subpoena requires the production
of all or any part of the records of the hospital relating
to the care or treatment of a patient in such hospital, it
shall be sufficient compliance therewith if the custodian or
other officer of the hospital shall, on or before the time
specified in the subpoena duces técum, file with court
clerk or the officer, body or tribunal conducting the hear-
ing, a true and correct copy (which may be a copy re-
produced on film or other reproducing material by
microfilming, photographing, photostating or other ap-
proximate process, or facsimile, exemplification or copy
of such reproduction or copy) of all records described in
such subpoena.

§57-5-4c. Hospital records; sealing, identification and direction
of copies.

The copy of the records shall be separately enclosed in
an inner-envelope or wrapper, sealed, with the style and
number of the action, name of witness and date of sub-
poena clearly inscribed thereon. The sealed envelope or
wrapper shall then be enclosed in an outer-envelope or
wrapper, sealed, and directed as follows:

If the subpoena directs attendance in court, to the
clerk of such court or to the judge thereof; if the subpoena
directs attendance at a deposition, to the officer be-
fore whom the deposition is to be taken, at the place
designated in the subpoena for the taking of the deposi-
tion or at his place of business; in other cases, to the
officer, body or tribunal conducting the hearing, at a like
address.

§57-5-4d. Hospital records; opening of sealed envelopes.

Unless the sealed envelope or wrapper is returned to a
witness who is to appear personally, the copy of the rec-
ords shall remain sealed and shall be opened only at the
time of trial, deposition, or other hearing, upon the direc-
tion of the judge, court, officer, body or tribunal conduct-
ing the proceeding, in the presence of all parties who
have appeared in person or by counsel at such trial,
deposition or hearing. Before directing that such inner-
envelope or wrapper be opened, the judge, court, officer,
body or tribunal shall first ascertain that either (1) the
records have been subpoenaed at the instance of the
patient involved or his counsel of record, or (2) the pa-
tient involved or someone authorized in his behalf to do
so for him has consented thereto and waived any privilege
of confidence involved. Records which are not introduced
in evidence or required as part of the record shall be
returned to the person or entity from whom received.

The provisions of this section shall not apply in a work-
men’s compensation proceeding if the pertinent record is
the record of the claimant therein or a claimant’s deced-
ent: Provided, That nothing in this section, or the pre-
ceding section, shall limit in any manner the availability
of and access to documents as provided in the rules of
civil procedure or elsewhere in this code by the parties
to any civil action and their counsel.

§57-5-4e. Hospital records; custodian’s affidavit; charges.

The records shall be accompanied by an affidavit of a
custodian stating in substance: (a) That the affiant is a
duly authorized custodian of the records and has author-
ity to certify said records, (b) that the copy is a true copy
of all the records described in the subpoena, (c) that the
records were prepared by the personnel of the hospital,
staff physicians, or persons acting under the control of
either, in the ordinary course of hospital business at or
near the time of the act, condition or event reported
therein, and (d) certifying the amount of the reasonable
charges of the hospital for furnishing such copies of the
record. If the hospital has none of the records described,
or only part thereof, the custodian shall so state in the
affidavit and file the affidavit and such records as are
available in the manner described in sections four-b and
four-c. The filing of such affidavit with respect to reason-
able charges shall be sufficient proof of such expense,
which shall be taxed as costs of court.
§57-5-4f. Hospital records; admissibility of copies and affidavits.

1 The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian has been present and testified to the matters stated in the affidavit.

2 The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

§57-5-4g. Hospital records; obtaining personal attendance of custodian.

1 The personal attendance of the custodian shall be required if the subpoena duces tecum contains a clause which reads:

4 "The procedure authorized pursuant to section four-b of this article will not be deemed sufficient compliance with this subpoena."

§57-5-4h. Hospital records; obtaining personal attendance of custodian and production of original record.

1 The personal attendance of the custodian and the production of the original record shall be required if the subpoena duces tecum contains a clause which reads:

4 "Original records are required, and the procedure authorized pursuant to section four-b, article five, chapter fifty-seven of this code, will not be deemed sufficient compliance with this subpoena."

§57-5-4i. Hospital records; substitution of copies after introduction of originals.

1 In view of the property right of the hospital in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body, or tribunal conducting the hearing. The
custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

§57-5-4j. Hospital records; evidence of reasonableness of medical expenses.

1 Proof that medical, hospital and doctor bills were paid or incurred because of any illness, disease or injury shall be prima facie evidence that such bills so paid or incurred were necessary and reasonable.

CHAPTER 117

(Com. Sub. for S. B. 280—By Mr. Ash and Mr. Gilligan)

[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, seven and eight, article two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the state geological and economic survey without the geological and economic survey commission; giving the governor power to appoint the director of the survey and allowing the director to hire employees, prepare reports and distribute or sell them.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey; director.

§29-2-5. Objects of survey.
§29-2-4. **State geological and economic survey; director.**

1 The state geological and economic survey, heretofore established, shall be continued. The governor shall appoint as director of the survey a geologist of established reputation.

2 The director may employ such assistants and employees as he may deem necessary. He shall also determine the compensation of all persons employed by the survey, and may remove them at pleasure.

§29-2-5. **Objects of survey.**

1 The survey shall have for its objects:

2 (a) An examination of the geological formations of the state, with special reference to their economic products, namely: Building stones and other constructive materials and resources, clays, ores and other mineral substances and fuels, the prevention of their waste, and the utilization of by-products;

3 (b) An examination of the physical features of the state with reference to their practical bearing upon the occupations of the people, the industrial development and the material prosperity of the several portions of the state, having due regard to their varying resources, conditions and needs;

4 (c) The preparation of special geological and economic maps to illustrate the resources of the state;

5 (d) The preparation of special reports, with necessary illustrations and maps, which shall embrace both a general and detailed description of the geology and natural resources of the state;

6 (e) The consideration of such other scientific and economic questions as in the judgment of the director shall be deemed of value to the people of the state. The director may enter into cooperative agreements, grants and contracts and establish accounts for such purposes.

§29-2-6. **Reports to Legislature.**

1 The director shall cause to be prepared a report to the
Legislature before each meeting of the same, showing the progress and condition of the survey, together with such other information as he may deem necessary and useful or as the Legislature may require.

§29-2-7. Distribution of reports.

The regular and special reports of the survey, with proper illustrations and maps, shall be printed as the director may direct, and the reports shall be distributed or sold by the director as the interests of the state, the diffusion of practical information relating to the development of the state, and the advancement of science, may demand. All moneys obtained by the sales of the reports may be used to defray the costs of publication and their distribution to the people and any balance may be retained for that purpose.


All materials collected, after having served the purpose of the survey, shall be distributed by the director to the educational institutions in such manner as to be of the greatest advantage to the educational interests of the state. If deemed advisable, all or part of such material may be put on permanent exhibition or otherwise disposed of in an appropriate manner.

CHAPTER 118
(H. B. 1323—By Mr. Knight)

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

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to the establishment by the commissioner of labor of a list of six hundred hazardous chemical substances to which employees in this state may be exposed; requiring said list to be composed of hazardous chemical substances published by the secretary of labor; requiring employers of
ten employees or more to post certain notices; requiring em­ployers to report incidents of overexposure by employees; providing for penalties; and providing exemptions for coal, agricultural and horticultural activities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-18. Hazardous chemical substances; notice to employees; reports to commissioner; penalties.

(a) It is declared the policy of this state to require em­ployers to disclose to employees the hazards of exposure in the work place to hazardous or toxic chemical substances and materials. For this purpose, the commissioner of labor shall establish and maintain, by rule or regulation, a list of chemical substances and materials which have been deter­med or are suspected to be hazardous or toxic to the health of employees who may be exposed to them in the course of employment. In establishing and maintaining such list, the commissioner may give consideration to any list made or hereafter made by the secretary of labor of the United States identifying or proposing to identify chemical substances and materials as hazardous or toxic, or setting standard levels of safe exposure thereto, as the same are published from time to time in the federal register. The commissioner shall publish and update, at least annually, such list of substances and materials and shall include in the publication thereof, for each listed substance or material, any standard levels of safe exposure published by said secretary in the federal register, giving due consideration to any changes made or proposed by said secretary in the secretary's list of hazardous or toxic chemical substances and materials, or in any standard levels of safe exposure established or proposed from time to time by said secretary, as the same are published in the federal register.
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(b) The commissioner shall make copies of such list prepared under this section available to any employer requesting the same: Provided, That the commissioner shall limit such list to no more than six hundred such substances and materials to be selected from the lists included in 29 Code of Federal Regulations 1910.1000, Subpart Z, which the commissioner elects to include because of either frequency of use in the state, frequency of exposure or overexposure thereof to workers in the state, the seriousness of the effects of such exposure or other reason which the commissioner determines to be sufficient.

(c) Any employer of ten or more employees using or producing any such listed hazardous chemical substance or material shall conspicuously post a warning notice in the work area where any such substance or material is used, to read substantially as follows:

WARNING NOTICE

(Name of hazardous chemical substance or material) is used at this work site.

Common symptoms of overexposure include the following:

Name of Employer

Any such notice required to be posted with regard to a mobile work site may be posted on the container or containers of the hazardous substance or material or in some other conspicuous place.

The employer shall include in the notice such common symptoms of overexposure as (1) may be published with the standard levels of safe exposure, or (2) certified to the employer by a physician employed for that purpose. Good faith reliance upon either such source of information shall be sufficient notice of such common symptoms.
(d) Any employer having notice of any incident of exposure to a listed hazardous chemical substance or material in excess of its standard level of safe exposure published by the commissioner shall within ten days thereof report to the commissioner the circumstances of such incident and provide a copy of the report to the employee.

(e) Any person or corporation that violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each violation.

(f) The provisions of this section shall not apply to any coal mine, coal mining or coal processing plant, and any agricultural or horticultural activity, and any such mine, plant or activity is hereby exempted from the provisions of this section.

CHAPTER 119

(Com. Sub. for H. B. 1479—By Mr. Stephens and Mr. Riffle)

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

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to storage, transportation, treatment or disposal of hazardous waste and a declaration of state policy with respect thereto; providing for a short title by which the article may be known; providing for definition of certain terms used with respect thereto; designating the department of natural resources as the lead agency for this state for purposes of Subtitle C of the federal Solid Waste Disposal Act; the powers and duties of the director of natural resources with respect thereto; the powers and duties of the chief of the water resources division, and the department of highways, public service commission, the department of health, the air pollution control commission, the office of oil and gas and the shallow gas-well review board with respect thereto;
providing for the promulgation of rules and regulations by such
director and chief as well as by such agencies with respect to
the transportation, treatment, storage and disposal of such waste
in this state; requiring written comments on rules and regula-
tions promulgated under this article by the director of the
department of natural resources to the legislative rule-making
review committee; providing for certain permits for such pur-
poses and applications therefor; the content and form of such
applications; providing for hearings with respect to such appli-
cations and certain notices to be given with respect thereto and
affording the right of public participation in such hearings;
providing for the operation by existing facilities during the
transition period applicable under this article; securing the con-
fidentiality of certain trade secrets and other information with
respect to the storage, treatment, transportation and disposal
of such waste; granting unto the chief or the director or to other
persons the right of entry to hazardous waste treatment or
disposal sites and the right to take samples thereon; requiring
certain reports and analyses with respect to such samples and
the disposition of such reports; granting certain powers of sub-
poena and subpoena duces tecum with respect to the enforce-
ment of this article; allowing monitoring of such sites; pro-
viding certain criminal and civil penalties for the violation of
this article and of the rules and regulations promulgated pur-
suant thereto; providing for injunctive relief in certain instances;
procedures relating to imminent and substantial hazards creat-
ed by such waste and the duties of the chief in connection
therewith; providing for certain duties of the attorney general
and of the prosecuting attorneys with respect to the enforce-
ment of this article; the right of the public to maintain suits and
to seek damages arising from the transportation, storage, treat-
ment or disposal of hazardous waste; requiring certain disclo-
sures in deeds and leases; requiring the equivalence of this
state's program with respect to hazardous waste with the fed-
eral program relating thereto; and providing for certain rules
of construction with respect to conflicting provisions of this
code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.
§20-5E-1. Short title.
§20-5E-2. Declaration of policy.
§20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.
§20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.
§20-5E-6. Promulgation of regulations by director.
§20-5E-7. Authority and jurisdiction of other state agencies.
§20-5E-8. Permit process; undertaking activities without a permit.
§20-5E-10. Transition program for existing facilities.
§20-5E-12. Inspections; right of entry; sampling; reports and analyses, subpoenas.
§20-5E-14. Enforcement orders; hearings.
§20-5E-16. Civil penalties and injunctive relief.
§20-5E-17. Imminent and substantial hazards; orders; penalties; hearings.
§20-5E-18. Citizen suits; petitions for rule making; intervention.
§20-5E-19. Appeal to water resources board; notice; hearings; orders.
§20-5E-20. Disclosures required in deeds and leases.
§20-5E-21. Appropriation of funds; hazardous waste management fund created.
§22-5E-22. State program to be consistent with and equivalent to federal program.

§20-5E-1. Short title.

1 This article may be known and cited as the “Hazardous Waste Management Act.”

§20-5E-2. Declaration of policy.

1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

3 (2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

4 (3) The knowledge and technology necessary for alleviat-
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ing adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

(4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this state; and

(5) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this state; and

(4) To assume regulatory primacy through Subtitle C of the federal Solid Waste Disposal Act, as amended.


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

3 (1) “Chief” means the chief of the division of water resources of the department of natural resources;

5 (2) “Director” means the director of the department of natural resources;

7 (3) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters;
(4) "Division" means the division of water resources of the department of natural resources;

(5) "Generation" means the act or process of producing hazardous waste materials;

(6) "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

(8) "Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(9) "Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other state, municipality, county commission or any other political subdivision of a state or any interstate body;

(10) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(11) "Treatment" means any method, technique or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such
term includes any activity or processing designed to change
the physical form or chemical composition of hazardous waste
so as to render it nonhazardous;

(12) "Waste" means any garbage, refuse, sludge from a
waste treatment plant, water supply treatment plant or air
pollution control facility and other discarded material in-
cluding solid, liquid, semisolid or contained gaseous material
resulting from industrial, commercial, mining and agricultural
operations, and from community activities, but does not in-
clude solid or dissolved material in domestic sewage, or solid
or dissolved materials in irrigation return flows or industrial
discharges which are point sources subject to permits under
section 402 of the federal Water Pollution Control Act, as
amended, or source, special nuclear or byproduct material as
defined by the federal Atomic Energy Act of 1954, as amend-
ed.

§20-5E-4. Designation of department of natural resources as the
state hazardous waste management lead agency.

The department of natural resources is hereby designated
as the hazardous waste management lead agency for this state
for purposes of Subtitle C of the federal Solid Waste Dis-
posal Act as amended, and is hereby authorized to take all
action necessary or appropriate to secure to this state the
benefits of said legislation. In carrying out the purposes of
this article, the director is hereby authorized to cooperate
with the federal environmental protection agency and other
agencies of the federal government, this state and other states,
and other interested persons in all matters relating to hazardous
waste management.

§20-5E-5. Powers and duties of director; integration with other acts;
establishment of study of hazardous waste manage-
ment.

(a) In addition to all other powers and duties prescribed
in this article or otherwise by law, and unless otherwise speci-
fically set forth in this article, the director shall perform any
and all acts necessary to carry out the purposes and require-
ments of Subtitle C of the federal Solid Waste Disposal Act, as
amended as of the effective date of this article.
(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of the water pollution control act, article five-a of this chapter; the surface mining and reclamation act, article six of this chapter; the coal refuse disposal control act, article six-c of this chapter; the air pollution control act, article twenty, chapter sixteen of this code; the oil and gas laws of article four, chapter twenty-two of this code; the public health laws, chapter sixteen of this code; the dam control act, article five-d of this chapter; the pesticide use and application act of 1975, article sixteen-b, chapter nineteen of this code; and the pesticide act of 1961, article sixteen-a, chapter nineteen of this code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(d) The director shall cooperate with and may receive and expend money from the federal government and other sources.

(e) Within twelve months after the effective date of this article, the director, or upon designation by the director, the chief, shall conduct and publish a study of hazardous waste management in this state which shall include, but not be limited to:

1. A description of the sources of hazardous waste generation within the state, including the types and quantities of such wastes;

2. A description of current hazardous waste management practices and costs, including treatment, storage and disposal within the state; and

3. An inventory of existing and abandoned hazardous waste treatment, storage and disposal sites.

(f) The director, or upon designation by the director, the chief, in preparing the study provided for in subsection (e)
of this section may (1) require any owner or operator of a storage, treatment or disposal facility, or site, or any transporter or generator of hazardous wastes to furnish or permit access to any and all information that may reasonably be required to fulfill the duty imposed upon him in subsection (e) of this section, and (2) may issue subpoenas or subpoenas tecum to compel the production of information regarding the location of any existing or abandoned hazardous waste treatment, disposal or storage site as well as production of information regarding quantity, quality and hazardous waste management practices from any generator or transporter of hazardous waste or any owner or operator of an existing or abandoned hazardous waste treatment, storage or disposal site.

(g) The director, or upon designation by the director, the chief, shall (1) encourage, participate in and conduct an ongoing investigation and analysis of methods, incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste, and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(h) The director, or upon designation by the director, the chief, shall provide for the continuing education and training of appropriate department personnel in matters of hazardous waste management.

§20-5E-6. Promulgation of regulations by director.

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. Within six months of the effective date of this article the director shall promulgate the following rules and regulations; in consultation with the department of health, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the department of highways, the department of agriculture, the water resources board and the department of mines office of oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication
to the maximum extent practicable with the appropriate pro-
visions of the acts and laws set out in subsection (b), section
five of this article and shall be consistent with the rules and
regulations promulgated by the federal environmental pro-
tection agency pursuant to the federal Solid Waste Disposal
Act, as amended:

(1) Rules and regulations establishing a plan for the safe
and effective management of hazardous wastes within the
state;

(2) Rules and regulations establishing criteria for identifying
the characteristics of hazardous waste, identifying the char-
acteristics of hazardous waste and listing particular hazardous
wastes which are subject to the provisions of this article:
Provided, That:

(A) Each waste listed below shall, except as provided in
subparagraph (B) of this subdivision, be subject only to
regulation under other applicable provisions of federal or
state law in lieu of this article until proclamation by the
governor finding that at least six months have elapsed since
the date of submission of the applicable study required to
be conducted under section 8002 of the federal Solid Waste
Disposal Act, as amended, and that regulations have been
promulgated with respect to such wastes in accordance with
section 3001 (b) (3) (C) of the federal Solid Waste Disposal
Act, as amended, and finding in the case of the wastes identi-
fied in paragraph (iv) of this subparagraph that the regula-
tion of such wastes have been authorized by an act of Con-
gress in accordance with section 3001 (b) (2) of the federal
Solid Waste Disposal Act, as amended:

(i) Fly ash waste, bottom ash waste, slag waste and flue
gas emission control waste generated primarily from the com-
bustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and pro-
cessing of ores and minerals, including phosphate rock and
overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes asso-
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associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in subparagraph (A) of this subdivision may be required by the director of the department of natural resources through regulation prescribed under authority of this section;

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(3) Rules and regulations establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting (A) record keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment and the disposition of such wastes, (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste, (C) use of appropriate containers for such hazardous waste, (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes, (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required (1) by this article or any rule and regulation required by this article to be promulgated, (2) by Subtitle C of the federal Solid Waste Disposal
Act, as amended, (3) by the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the federal Solid Waste Disposal Act, as amended, or (4) by title I of the federal Marine Protection, Research and Sanctuaries Act and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and regulations and shall include, but need not be limited to, requirements respecting: (A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3), subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the directors; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity
can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal;

(5) Rules and regulations specifying the terms and conditions under which the chief shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules and regulations for the establishment and maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and maintaining of monitoring equipment or methods; and the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules and regulations establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites;

(8) Rules and regulations for public participation in the implementation of this article;

(9) Rules and regulations establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(10) Rules and regulations establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules and regulations establishing a schedule of fees to recover the costs of processing permit applications and permit renewals; and

(12) Such other rules and regulations as are necessary to effectuate the purposes of this article.
(b) The rules and regulations required by this article to be promulgated shall be reviewed and where necessary, revised not less frequently than every three years. Additionally, the rules and regulations required to be promulgated by this article shall be revised, as necessary, within six months of the effective date of any amendment of the federal Solid Waste Disposal Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the federal Solid Waste Disposal Act, as amended.

(c) Notwithstanding any other provision in this article the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

§20-5E-7. Authority and jurisdiction of other state agencies.

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided. That such rules and regulations shall apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such waste within the boundaries of this state. Such rules and regulations shall be promulgated within six months of the effective date of this article.

In lieu of those enforcement and inspection powers conferred upon the commissioner of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of highways has the same enforcement and
inspection powers as those granted to the chief, his authorized
representative or agent, or any authorized employee or agent
of the department of natural resources, as the case may
be, under sections eleven, twelve, thirteen, fourteen, fif-
ten, sixteen and seventeen of this article. The limitations of
this subsection shall not affect in any way the powers of the
department of highways with respect to weight enforce-
ment.

(b) The public service commission, in consultation with
the director, and avoiding inconsistencies with and avoid-
ing duplication to the maximum extent practicable with
rules and regulations required to be promulgated pur-
suant to this article by the director or any other rule-
making authority, and in accordance with the provisions
of chapter twenty-nine-a of this code, shall promulgate, as
necessary, rules and regulations governing the transporta-
tion of hazardous wastes by railroad in this state. Such
rules and regulations shall be consistent with applicable
rules and regulations issued by the federal department of
transportation and consistent with this article: Provided,
That such rules and regulations apply to the interstate
transportation of hazardous wastes as well as the intra-
state transportation of such wastes within the bound-
aries of this state. Such rules and regulations shall be
promulgated within six months of the effective date of this
article.

In lieu of those enforcement and inspection powers con-
ferred upon the public service commission elsewhere by law
with respect to the transportation of hazardous waste, the
public service commission has the same enforcement and
inspection powers as those granted to the chief, his authorized
representative or agent or any authorized employee or agent of
the department of natural resources, as the case may be, under
sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and
seventeen of this article.

(c) The rules and regulations required to be promulgated
pursuant to subsections (a) and (b) of this section shall
apply equally to those persons transporting hazardous wastes
generated by others and to those transporting hazardous
wastes they have generated themselves or combinations thereof. Such rules and regulations shall establish such standards, applicable to transporters of hazardous waste identified or listed under this article, as may be necessary to protect public health, safety and the environment. Such standards shall include, but need not be limited to, requirements respecting (A) record keeping concerning such hazardous waste transported, and their source and delivery points, (B) transportation of such waste only if properly labeled, (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under (1) this article or any rule and regulation required by this article to be promulgated; (2) Subtitle C of the federal Solid Waste Disposal Act, as amended; (3) the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the federal Solid Waste Disposal Act, as amended; or (4) Title I of the federal Marine Protection, Research and Sanctuaries Act.

(d) The state director of health has jurisdiction over the enforcement of regulations pertaining to hazardous wastes with infectious characteristics and the permitting and licensing of facilities that treat, store or dispose of such hazardous wastes: Provided, That the state board of health, in consultation with the director of the department of natural resources and avoiding inconsistencies with, and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director of the department of natural resources or any other rule-making authority, shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, however, That nothing in this subsection shall be construed to diminish or alter the authority of the air pollution control commission or its director under this article or article twenty, chapter sixteen of this code: Provided further, That such permitting or licensing shall be in addition to those permits required by section eight of this article. Such rules and regulations shall be consistent
with this article. Such rules and regulations shall be promulgated within six months of the effective date of this article.

Any person aggrieved or adversely affected by an order of the state director of health pursuant to this article, or the denial or issuance of a permit, or the failure or refusal of said director to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to hear contested cases in accordance with the provisions of chapter twenty-nine-a of this code. All procedures for appeal and conduct of hearings shall comply with rules and regulations promulgated by the state board of health. Unless the board of health directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County.

In lieu of those enforcement and inspection powers conferred upon the state director of health elsewhere by law with respect to hazardous waste with infectious characteristics, the state director of health shall have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(e) The director shall rely, to the maximum extent practicable, on the department of health for expertise on the adverse effects of toxic hazardous waste on human health.

(f) The air pollution control commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of article twenty, chapter sixteen and chapter twenty-nine-a of this code, shall promulgate such rules and regulations establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article. Such permits as such regulations may require shall be in
addition to those permits required by section eight of this article. All rules and regulations promulgated pursuant to this subsection shall be consistent with this article and shall be promulgated within six months of the effective date of this article.

With respect to this article, and any rules or regulations promulgated pursuant hereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, That no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(g) The director of the department of natural resources has exclusive responsibility for carrying out any requirement of this article with respect to coal mining wastes or overburden for which a permit is issued under the Surface Coal Mining and Reclamation Act of 1980, article six of this chapter.

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste
disposal wells now regulated by articles four, four-b and seven, chapter twenty-two of the code, the administrator of the office of oil and gas and the shallow gas-well review board has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, That nothing in this subsection may be construed to diminish or alter the authority and responsibility of the chief or the water resources board under articles five and five-a, chapter twenty of this code.

In lieu of those enforcement and inspection powers conferred upon the administrator of the office of oil and gas and the shallow gas-well review board elsewhere by law, with respect to hazardous wastes, the administrator of the office of oil and gas and the shallow gas-well review board have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(i) The water resources board, within six months of the effective date of this article, in consultation with the director, and avoiding inconsistency with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate rules and regulations governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste and rules and regulations governing the issuance, modification, suspension, revocation or denial of such permits relating to such discharges from the treatment, storage or disposal of hazardous waste, as may be required by this article. Such rules and regulations shall be consistent with this article.

(j) All rules and regulations promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the federal Solid Waste Disposal Act, as amended.
(k) The director shall submit his written comments to the legislative rule-making review committee regarding all rules and regulations promulgated pursuant to this article.

§20-5E-8. Permit process; undertaking activities without a permit.

(a) No person may construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the chief for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the chief may direct if the application, together with all supporting information and data and other evidence establishes that the construction modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules and regulations promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the chief shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of section seven of this article and which need not be regulated in order for the chief to perform his duties under this article.

(b) The chief shall prescribe a form of application for all permits issued by the chief.

(c) The chief may require a plan for the closure of such facility or site to be submitted along with an application for a permit which plan for closure shall comply in all respects with the requirements of this article and any rules and regulations promulgated hereunder. Such plan of closure shall be subject to modification upon application by the permit holder to the chief and approval of such modification by the chief.

(d) An environmental analysis shall be submitted with the permit application for all hazardous waste treatment, storage or disposal facilities which are major facilities as that term may
be defined by rules and regulations promulgated by the director: Provided, That facilities in existence on the nineteenth day of November, one thousand nine hundred eighty, need not comply with this subsection. Such environmental analysis shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(1) The portion of the applicant's environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(A) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(B) A description of the expected effect of such facilities; and

(C) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:

(A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the site and estimates of the cost and charges to be made for material accepted, if any;

(B) Provisions for managing the site following cessation of operation of the facility; and

(C) Qualifications of owner and operation, including a description of the applicant's prior experience in hazardous waste management operations.

(e) Any person undertaking, without a permit, any of the activities for which a permit is required under this section or under section seven of this article, or any person violating any term or condition under which a permit has been issued
pursuant to this section or pursuant to section seven of this article, shall be subject to the enforcement procedures of this article.

(f) Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or section seven of this article, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Coal Mining and Reclamation Act of 1980, article six of this chapter, shall be considered to have all necessary permits issued pursuant to this article with respect to the treatment, storage or disposal of such wastes or overburden. Rules and regulations promulgated under this article are not applicable to treatment, storage or disposal of coal mining wastes and overburden which are covered by such a permit.


Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight of this article, the chief or other permit issuing authority shall:

(a) Cause to be published as a Class I-0 legal advertisement in a newspaper of general circulation, and the publication area shall be the county wherein the real estate or greater portion thereof is situate, and broadcast over local radio stations notice of the chief's or other permit issuing authority's intention to issue such permit; and

(b) Transmit written notice of the chief's or other permit issuing authority's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of such facility.

If within forty-five days the chief or other permit issuing authority receives written notice of opposition to the chief's or other permit issuing authority's intention to issue such permit and a request for a hearing, or if the chief or other permit issuing authority determines on his own initiative,
to have a hearing he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the chief or other permit issuing authority shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time and subject matter of such hearing.

§20-SE-10. Transition program for existing facilities.

Any person who owns or operates a facility required to have any permit under this article, which facility is in existence on the effective date of this article, shall be treated as having been issued such permit until such time as final administrative disposition is made with respect to an application for such permit: Provided, That on the effective date of this article such facility is operating and continues to operate in compliance with the interim status requirement of the federal environmental protection agency established pursuant to section 3005 of the federal Solid Waste Disposal Act, as amended, if applicable, and in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment: Provided, however, That the owner or operator of such facility shall make a timely and complete application for such permit in accordance with rules and regulations promulgated pursuant to this article specifying procedures and requirements for obtaining such permit.


Information obtained by any agency under this article shall be available to the public unless the chief certifies such information to be confidential. The chief may make such certification where any person shows, to the satisfaction of the chief, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this section may be construed as limiting the disclosure of information by the division to any officer, employee or authorized representative of the
10 state or federal government concerned with effecting the
11 purposes of this article.

12 Any person who knowingly and willfully divulges or dis-
13 closes any information entitled to protection under this section
14 is guilty of a misdemeanor, and, upon conviction thereof,
15 shall be fined not more than five thousand dollars, or im-
16 prisoned in the county jail for not more than six months,
17 or both fined and imprisoned.

§20-5E-12. Inspections; right of entry; sampling; reports and
1 analyses; subpoenas.

(a) The chief or any authorized representative, employee
2 or agent of the division, upon the presentation of proper
3 credentials and at reasonable times, may enter any building,
4 property, premises, place, vehicle or permitted facility where
5 hazardous wastes are or have been generated, treated, stored,
6 transported or disposed of for the purpose of making an
7 investigation with reasonable promptness to ascertain the
8 compliance by any person with the provisions of this article
9 or the rules and regulations promulgated by the director or
10 permits issued by the chief hereunder.

(b) The chief or his authorized representative, employee
12 or agent shall make periodic inspections at every permitted
13 facility as necessary to effectively implement and enforce
14 the requirements of this article or the rules and regulations
15 promulgated by the director or permits issued by the chief
16 hereunder. After an inspection is made, a report shall be
17 prepared and filed with the chief and a copy of such inspec-
18 tion report shall be promptly furnished to the person in
19 charge of such building, property, premises, place, vehicle
20 or facility. Such inspection reports shall be available to the
21 public in accordance with the provisions of article one,
22 chapter twenty-nine-b of this code.

(c) Whenever the chief has cause to believe that any
23 person is in violation of any provision of this article, any
24 condition of a permit issued by the chief, any order or any
25 regulation promulgated by the director under this article, he
26 shall immediately order an inspection of the building, property,
(d) The chief or any authorized representative, employee or agent of the division may, upon presentation of proper credentials and at reasonable times, enter any establishment or other place maintained by any person where hazardous wastes are or have been stored, treated or disposed of to inspect and take samples of wastes, soils, air, surface water and ground water and samples of any containers or labelings for such wastes. In taking such samples, the division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the representative, employee or agent obtains any such samples, prior to leaving the premises, he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The division shall promptly provide a copy of any analysis made to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the chief or any authorized representative, employee or agent of the division shall be given access to all records relating to the storage, treatment or disposal of hazardous waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the chief or an authorized representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies. If the chief, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.


(a) If the chief determines, upon receipt of any information,
that (1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of, or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the chief deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the chief finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the chief within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The chief may, after providing such person with an opportunity to confer with the chief respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the chief deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the chief:

(1) If the chief determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the chief, if the chief deems any such action carried out by an owner or operator to be unsatisfactory or if the chief cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to con-
duct such monitoring, testing, analysis or reporting, he may conduct monitoring, testing or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the chief or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the chief which confirms the results of the order issued under subsection (a) or (b) of this section.

(e) The chief may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed five thousand dollars for each day during which such failure or refusal occurs.


(a) If the chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules or regulations issued or promulgated hereunder, he may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the chief not more than seven days from the issuance of such order and shall have a hearing before the chief contesting the terms and conditions of such order within ten days of the filing of such notice of a
request for reconsideration. The filing of a notice of request
for reconsideration shall not stay or suspend the execution or
enforcement of such cease and desist order.


(a) If any person knowingly (1) transports any hazardous
waste identified or listed under this article to a facility which
does not have a permit required by this article, section 3005
of the federal Solid Waste Disposal Act, as amended, the laws
of any other state which has an authorized hazardous waste
program pursuant to section 3006 of the federal Solid Waste
Disposal Act, as amended, or Title I of the federal Marine
Protection, Research and Sanctuaries Act; (2) treats, stores
or disposes of any such hazardous waste either (A) without
having obtained a permit required by this article, or by Title
I of the federal Marine Protection, Research and Sanctuaries
Act, or by section 3005 or 3006 of the federal Solid Waste
Disposal Act, as amended, or (B) in knowing violation of a ma-
terial condition or requirement of such permit he shall be guilty
of a felony, and, upon conviction thereof, shall be fined not to
exceed fifty thousand dollars for each day of violation or con-
signed in the penitentiary not less than one nor more than two
years, or both such fine and imprisonment or, in the discretion
of the court, be confined in jail not more than one year in
addition to the above fine.

(b) If any person knowingly (1) makes any false material
statement or representation in any application, label, manifest,
record, report, permit or other document filed, maintained or
used for purposes of compliance with this article; or (2) gener-
ates, stores, treats, transports, disposes of or otherwise handles
any hazardous waste identified or listed under this article
(whether such activity took place before or takes place after the
effective date of this article) and who knowingly destroys, alters
or conceals any record required to be maintained under regula-
tions promulgated by the director pursuant to this article, he
shall be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not to exceed twenty-five thousand dollars.

(c) Any person convicted of a second or subsequent vio-
lation of subsections (a) and (b) of this section shall be guilty
of a felony, and, upon such conviction, shall be confined in the penitentiary not less than one nor more than three years or fined not more than fifty thousand dollars for each day of violation or both such fine and imprisonment.

(d) Any person who knowingly transports, treats, stores or disposes of any hazardous waste identified or listed pursuant to this article in violation of subsection (a) of this section, or having applied for a permit pursuant to sections seven and eight of this article, and knowingly either (1) fails to include in a permit application any material information required pursuant to this article, or rules and regulations promulgated hereunder, or (2) fails to comply with applicable interim status requirements as provided in section ten of this article and who thereby exhibits an unjustified and inexcusable disregard for human life or the safety of others and he thereby places another person in imminent danger of death or serious bodily injury, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than two hundred fifty thousand dollars or imprisoned not less than one year nor more than four years or both such fine and imprisonment.

(e) As used in subsection (d) of this section, the term "serious bodily injury" means:

(1) Bodily injury which involves a substantial risk of death;
(2) Unconsciousness;
(3) Extreme physical pain;
(4) Protracted and obvious disfigurement; or
(5) Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

§20-5E-16. Civil penalties and injunctive relief.

Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action in the circuit court of the appropriate county.
The chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the chief to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

Upon request of the chief, the attorney general, or the prosecuting attorney of the county in which the violation occurs, shall assist the chief in any civil action under this section.

In any action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

§20-5E-17. Imminent and substantial hazards; orders; penalties; hearings.

(a) Notwithstanding any provision of this article to the contrary, the chief, upon receipt of information, or upon observation or discovery that the handling, storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial endangerment to public health, safety or the environment, may:

(1) Request the attorney general or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal or to take such other action as may be necessary; or

(2) Take other action under this section including, but
not limited to, issuing such orders as may be necessary to
protect public health and the environment.

(b) Any person who willfully violates, or fails or refuses
to comply with, any order of the chief under subsection (a)
of this section may, in an action brought in the appropriate
circuit court to enforce such orders, be fined not more than
five thousand dollars for each day in which such violation
occurs or such failure to comply continues.

§20-5E-18. Citizen suits; petitions for rule making; intervention.

(a) Any person may commence a civil action on his own
behalf against any person who is alleged to be in violation
of any provision of this article or any condition of a permit
issued or rules and regulations promulgated hereunder, except
that no action may be commenced under this section prior
to sixty days after the plaintiff has given notice to the appro-
priate enforcement, permit issuing or rule-making authority
and to the person against whom the action will be commenced,
or if the state has commenced and is diligently prosecuting a
civil or criminal action pursuant to this article: Provided,
That such person may commence a civil action immediately
upon notification in the case of an action under subsection
(b) of this section. Such actions may be brought in the
circuit court in the county in which the alleged violation occurs
or in the circuit court of Kanawha County.

(b) Any person may commence a civil action against the
appropriate enforcement, permit issuing or rule-making au-
thority where there is alleged a failure of such authority to
perform any nondiscretionary duty or act under this article.
Such actions may be brought only in the circuit court of
Kanawha County.

(c) Any person may petition the appropriate rule-making
authority for rule-making on an issue arising under this
article. The appropriate rule-making authority, if it believes
such issue to merit rule-making, may commence any studies
and investigations necessary to issue rules and regulations.
A decision by the appropriate rule-making authority not to
pursue rule-making must be set forth in writing with sub-
stantial reasons for refusing to do so.
(d) Nothing in this article may be construed to restrict any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney’s fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.

(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action and be entitled to damages by any other rule of law.

§20-5E-19. Appeal to water resources board; notice; hearings; orders.

(a) Any person aggrieved or adversely affected by an order of the chief made and entered in accordance with the provisions of this article, or by the failure or refusal of the chief to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the chief under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as such person believes that the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.
(b) An appeal shall be perfected by filing a notice of appeal, on the form prescribed by the water resources board for such purpose, with such board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the water resources board that an unjust hardship to the appellant will result from the execution of the chief’s order pending determination of the appeal, the chief or such board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order, action or terms and conditions complained of, the grounds upon which the appeal is based and the action sought by the appellant. A copy of the notice of appeal shall be filed by the water resources board with the chief within three days after the notice of appeal is filed with such board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the water resources board a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the possession of the chief relating to the matter in question. With the consent of such board and upon such terms and conditions as such board may prescribe, any persons affected by any such activity may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo and evidence may be offered on behalf of the appellant, the appellee and by any intervenors.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of article five were set forth in extenso in this section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County; and

(2) In accordance with the provisions of section one, article
five of said chapter twenty-nine-a, all of the testimony at any
such hearing shall be recorded by stenographic notes and
characters or by mechanical means. Such reported testimony
in every appeal hearing under this article shall be transcribed.

(e) Any such appeal hearing shall be conducted by a quorum
of the board but the parties by stipulation may agree to take
evidence before a hearing examiner employed by the board.
For the purpose of conducting such appeal hearing, any mem-
ber of the board and the secretary thereof may issue sub-
poenas and subpoenas duces tecum in the name of the board,
in accordance with the provisions of section one, article five,
chapter twenty-nine-a of this code. All subpoenas and sub-
poenas duces tecum shall be issued and served within the time
and for the fees and shall be enforced as specified in section
one, article five of chapter twenty-nine-a and all of the pro-
visions of section one dealing with subpoenas and subpoenas
duces tecum shall apply to subpoenas and subpoenas duces
tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after
the date upon which the board received the notice of appeal
unless there is a postponement or continuance. The board may
postpone or continue any hearing upon its own motion or upon
application of the appellant, the appellee or any intervenors for
good cause shown. The chief shall be represented at any such
hearing by the attorney general or his assistants, or the chief,
with the written approval of the attorney general, may em-
ploy counsel to represent him. At any such hearing the appel-
ellant and any intervenor may represent himself or be represented
by an attorney-at-law admitted to practice before any circuit
court of this state.

(g) After such hearing and consideration of all the testi-
mony, evidence and record in the case, the board shall make
and enter an order affirming, modifying or vacating the order
of the chief, or shall make and enter such order as the chief
should have entered, or shall make and enter an order ap-
proving or modifying the terms and conditions of any permit
issued or shall make and enter an order taking such action as
the chief should have taken.
(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, the appellee, any intervenors and their respective attorneys of record, if any, in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review. The order of the board is final unless vacated or modified upon judicial review thereof.


1 (a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection shall only apply to those grantors or lessors who owned or had an interest in the real property when the same or the subsurface thereof was used for the purpose of storage, treatment or disposal of hazardous waste or who have actual knowledge that such real property or the subsurface thereof was used for such purpose or purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata underlying said real estate or any lessee for a term who intends to use the real estate conveyed or let or any substrata underlying the same for the purpose of storing, treating or disposing of hazardous waste shall disclose in writing at the time of such conveyance or lease or within thirty days prior thereto such fact to the grantor or lessor of such real estate or substrata. Such disclosure shall describe the proposed location upon said property of the site to be used for the storage, treatment or disposal of hazardous waste, the identity of such waste, the
proposed method of storage, treatment or disposal to be used
with respect to such waste and any and all other information
required by rules and regulations of the director.

§20-5E-21. Appropriation of funds; hazardous waste management
fund created.

1 The net proceeds of all fines, penalties and bond forfeitures
collected under this article shall be appropriated as directed
by Article XII, Section 5 of the Constitution of West Virginia.
2 For the purposes of this section the net proceeds of such
fines, penalties and forfeitures shall be deemed the proceeds
remaining after deducting therefrom those sums appropriated
by the Legislature for defraying the cost of administering
this article. All permit application fees collected under this
article shall be paid into the state treasury into a special
fund designated "The Hazardous Waste Management Fund."
3 In making the appropriation for defraying the cost of ad-
ministering this article, the Legislature shall first take into
account the sums included in such special fund prior to de-
ducting such additional sums as may be needed from the fines,
penalties and forfeitures collected pursuant to this article.

§20-5E-22. State program to be consistent with and equivalent to
federal program.

1 The program for the management of hazardous waste pur-
suant to this article shall be equivalent to and consistent with
the federal program established pursuant to Subtitle C of the
federal Solid Waste Disposal Act, as amended.


1 This article is intended to supplement existing law and
it is not the intention of the Legislature in enacting this
article to repeal, expressly or by implication, any other pro-
vision of this code. In the event that some provision herein
is inconsistent with any other provisions of the code, making
it impossible to comply with both, the provisions of this
article shall control: Provided, That no enforcement proceed-
ing brought pursuant to this article may be duplicated by an
enforcement proceeding subsequently commenced under some
other article of this code with respect to the same transac-
CHAPTER 120

(Com. Sub. for H. B. 774—By Mr. Polan and Mr. Farley)

[Passed April 9, 1981; in effect January 1, 1982. Approved by the Governor.)

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating to establishing a separate account in the state treasury for fees received from all sources, including the United States government, the state government or third-party payers, by facilities owned and operated by the state health department; requiring development of a five-year plan by the director; permitting the director to make expenditures from the separate account for purposes of developing the five-year plan, improving health services or obtaining certification; requiring recommendations of the director as to capital projects, priorities and cost to be prior made and processed through the budget process for legislative appropriation; providing effective date; and requiring an annual report to be made to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-15a. Hospital services revenue account; health facilities long-range plans.

1 On and after the first day of January, one thousand nine hundred eighty-two, and subject to the provisions set forth in section two, article two, chapter twelve of this code, there is
established in the state treasury a separate account which shall be designated the "hospital services revenue account." The director of health shall deposit promptly into the account any fees received by a facility owned and operated by the state health department from whatever source including the federal government, state government or other third-party payer or personal payment.

A five-year health facilities long-range plan shall be developed by the director and shall be adopted by the state board of health as regulation in accordance with chapters sixteen and twenty-nine-a of this code. The health facilities long-range plan shall be updated and revised at least every two years.

The director is authorized to expend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state as is necessary for the development of the five-year health facilities long-range plan and subsequent revisions.

The director is authorized to expend the moneys deposited in the hospital services revenue account as provided for in the health facilities long-range plan at such times and in such amounts as the director determines to be necessary for the purpose of improving the delivery of health and mental health services at state health and mental health facilities or for the purpose of maintaining or obtaining certification at a state health or mental health facility: Provided, That during any fiscal year in which the director anticipates spending any money from such account, he shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility in such amounts as the director determines to be necessary for the development of, and as provided for in, the five-year health facilities long-range plan and subsequent revisions.
The director shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year’s expenditures and projected expenditures for the next year.

CHAPTER 121

(Com. Sub. for H. B. 1729—By Mr. Damron, 13th Dist., and Mr. Simpkins)

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

AN ACT to amend and reenact section one, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two-a of said chapter, relating to granting county health officers the authority to determine when corrections have been made sufficient to warrant removal of any limitation or restriction placed by an employee under his supervision.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Local Health Officers.

2A. Alternative Method of Organizing Local Health Agencies.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.

It shall be the duty of the director of the West Virginia department of health, upon the recommendation of the county commission of the county, to appoint in each county of this state a legally qualified physician, who shall be known as the county health officer. It shall also be the duty of such director, upon the recommendation of the municipal council or other
governing body of any municipality, to appoint in such munici-
pality a legally qualified physician, who shall be known as
the municipal health officer: Provided, That no municipality
organized and existing without a special charter from the
Legislature and located within a county which maintains a full-
time county health officer, shall appoint a part-time municipal
health officer. The county and municipal health officers in
office on the date this section becomes effective shall, unless
sooner removed, continue to serve until their respective terms
expire, and until their successors have been appointed and have
qualified. Beginning on the first day of July, one thousand nine
hundred thirty-three, and on the first day of July of each fourth
year thereafter, a county health officer shall be appointed as
aforesaid to serve for a term of four years, unless sooner re-
moved by the said county commission or by the West Virginia
director of health. Beginning on the first day of July, one thou-
sand nine hundred thirty-one, and on the first day of July of
each alternate year thereafter, a municipal health officer shall
be appointed as aforesaid to serve for a term of two years, un-
less sooner removed by the said municipality or by the West
Virginia director of health. If the West Virginia director of
health fails to confirm the nomination of the person recom-
mended as county or municipal health officer, or if the West
Virginia director of health or the county or municipal authority
removes any such officer, another nomination shall at once
be made to the West Virginia director of health by the nomi-
nating authority.

The county health officer shall receive an official salary of
not less than three hundred dollars per annum and such other
amount as the county commission may add for additional ser-
vices and actual necessary traveling expenses, unless for work
specially done under orders of the state department of health.
The salary of the county health officer shall be paid out of the
treasury of the county. It shall be the duty of every practicing
physician to report to the municipal or county health officer,
where there is such official, immediately on diagnosis, those
diseases or conditions for which a report is required by the
state board of health and in the manner specified by the state
health director which may arise or come under the physician's
treatment. The health officer receiving such reports shall make
to the state health department a weekly report in a manner
specified by the director of health.

The county health officer together with the president of the
county commission and the prosecuting attorney shall consti-
tute the county board of health, of which the county health
officer shall be the executive officer. The county board of
health shall exercise all the powers and enforce all the rules
and regulations of the West Virginia board of health, so far
as applicable to such county. In a county which has a full-
time county health officer, the jurisdiction of the county board
of health and of the county health officer shall be coextensive
with the county and shall include every city, town and village
therein which does not have a full-time health officer of its
own, but shall not include any city, town or village therein
which has such full-time health officer. In a county which has
a part-time health officer only, the jurisdiction of the county
board of health and of such part-time health officer shall not
extend to any city, town or village therein having a full-time or
part-time health officer of its own. All county and municipal
boards of health and health officers shall be secondary to the
West Virginia board of health and the director of the West
Virginia department of health and subject to all orders of the
director of the West Virginia department of health who may, if
deemed expedient, act through the county and municipal
boards. The county health officer or his designated representa-
tive shall determine when corrections have been made suffi-
cient to warrant removal of any restriction or limitation placed
by an employee under his supervision.

Any failure to comply with any of the provisions of this
section is a misdemeanor, and, upon conviction thereof, the
offender shall be fined not more than one hundred dollars.

**ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.**

§16-2A-5. Powers and duties of county or municipal health offi-
cers; required reporting of diseases.

The county or municipal health officer appointed by any
local board of health created pursuant to the provisions of this
article shall be the executive officer of such board of health.
Under the supervision of the board, he shall administer the
provisions of this article, all other laws of this state relating to
public health and applicable to his county or municipality,
and the rules, regulations and orders of such county or muni-
cipal board of health and of the state board of health, so far
as such rules, regulations and orders are applicable to his
county or municipality.

Such health officer shall attend, but not vote, at all meetings
of his county or municipal board of health. He shall act as
secretary of such board and shall be in charge of its offices.
He shall supervise and direct the activities of county or muni-
cipal health services, employees and facilities, except that the
duties of such health officer shall not include the rendering of
medical or surgical services on an individual basis to wards of
the county or municipality or to inmates of any public institu-
tion operated or maintained by any county commission or
municipality. The county health officer or his designated repre-
sentative shall determine when corrections have been made
sufficient to warrant removal of any restriction or limitation
placed by an employee under his supervision.

It shall be the duty of every practicing physician to report
to the municipal or county health officer, where there is such
official, immediately on diagnosis, those diseases or condi-
tions for which a report is required by the state board of health
and in the manner specified by the state health director which
may arise or come under the physician's treatment. Any health
officer receiving such reports shall make to the state director of
health a weekly report in a manner specified by the director of
health.

CHAPTER 122
(H. B. 1789—By Mrs. Hartman)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six,
seven, eight, nine, ten, eleven, twelve and thirteen, article
two-d, chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all relating
to public health and requiring a certificate of need prior to the acquiring, offering or development of all new institutional health services within this state; defining terms; requiring institutional health services to be subject to review; providing for exemptions; permitting the state health planning and development agency to administer the certificate of need program; providing for cooperation with the statewide health coordinating council and other persons; strengthening competition and allocating supply of health services; enumerating criteria for certificate of need program; providing for procedure for conducting a certificate of need review; providing for reconsideration hearings; providing for rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional regulations; providing for adoption of review data; giving power to render a final decision; authorizing power to issue a certificate of need where appropriate; requiring written findings; providing for a capital expenditure maximum; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for nontransference, compliance and withdrawal of certificates of need; providing for denial of license; providing for injunction relief and civil action; and providing for a civil penalty.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article two-d, chapter sixteen of the code of the West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-3. Certificate of need.
§16-2D-4. Exemptions from certificate of need program.
§16-2D-5. Powers and duties of state health planning and development agency.
§16-2D-6. Minimum criteria for certificate of need reviews.
§16-2D-7. Procedures for certificate of need reviews.
§16-2D-8. Agency to promulgate additional rules and regulations.
§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.
§16-2D-10. Appeal of certificate of need decisions.
§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

§16-2D-12. Denial or revocation of license for operating without certificate.

§16-2D-13. Injunctive relief; civil penalty.

§16-2D-2. Definitions.

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

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) The applicable health systems agency;

6 (3) Health systems agencies serving the contiguous health service areas or located within the same standard metropolitan statistical area;

9 (4) Any individual residing within the geographic area served or to be served by the applicant;

11 (5) Any individual who regularly uses the health care facilities within that geographic area;

13 (6) The health care facilities located in the applicable health service area which provide services similar to the services of the facility under review;

16 (7) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

20 (8) Third party payers who reimburse any health care facilities for services in the applicable health service area;

22 (9) Any agency which establishes rates for the health care facilities located in the applicable health service area; or

24 (10) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a facility which is freestanding and not physically attached to a health care facility and which provides health care to noninstitution-
alized and nonhomebound persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private offices of any health care providers: Provided, That this definition does not include the legally authorized provision of health care services by any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code.

(c) "Ambulatory surgical facility" means a facility which is freestanding and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private offices of any health care providers.

d) "Annual implementation plan" means a plan established, annually reviewed and amended as necessary by a health systems agency in conformance with section 1513 (b) (3) of the public health service act, as amended, Title 42 United States Code section 3001-2(b) (3), which describes objectives which will achieve the goals of the health systems plan, or, if those goals are amended by the statewide health coordinating council when included in the state health plan, as so amended, and priorities among the objectives.

(e) "Applicable health service area" means a health service area, as defined in this section, in which a new institutional health service is proposed to be located.

(f) "Applicable health systems agency" means a health systems agency for a health service area in which a proposed new institutional health service is to be located.

(g) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide such new institutional health service. Incorporators or promoters who will not con-
stitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(h) “Bed capacity” means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.

(i) “Capital expenditure” means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made, or (iii) is a substantial change to the services of such facility. For purposes of part (i), subparagraph (B), subdivision (2) of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B), subdivision (2) of this definition is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such subdivisions if a transfer of the equipment or facilities at fair market value would be subject to review. A series of expenditures, each less than the expenditure minimum, which when taken together are in excess of the expenditure minimum, may be determined by the state agency to be a single capital expenditure subject to review. In making its determination, the state agency shall
consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long range plan; or, whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(j) "Expenditure minimum" means one hundred fifty thousand dollars for the twelve-month period beginning the first day of October, one thousand nine hundred seventy-nine. For each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum to reflect the impact of inflation.

(k) "Health," used as a term, includes physical and mental health.

(l) "Health care facility" is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies, rehabilitation facilities, and health maintenance organizations, whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state.

(m) "Health care provider" means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

(n) "Health maintenance organization" means a public or private organization, organized under the laws of this state, which:

(1) Is a qualified health maintenance organization under section 1310(d) of the public health service act, as amended, Title 42 United States Code section 300e-9(d); or
(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services and out-of-area coverage; and

(B) Is compensated except for copayments for the provision of the basic health care services listed in subparagraph (2) (A), subdivision (n) of this definition to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(C) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(o) "Health service area" means a geographic area designated by the federal secretary of health & human services pursuant to section 1511 of the public health service act, as amended, Title 42 United States Code section 3001, with respect to which health systems agencies shall be designated under section 1515 of such act, as amended, Title 42 United States Code section 3001-4.

(p) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(q) "Health systems agency" means an entity which is conditionally or fully designated as such by the federal secretary of health & human services pursuant to section 1515 of the public health service act, as amended, Title 42 United States Code section 3001-4.

(r) "Health systems plan" means a plan established by a health systems agency, under section 1513 (b)(2) of the public health service act, as amended, Title 42 United States Code section 3001-2 (b) (2), which is a detailed statement of goals describing a healthful environment and health systems of
an area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of that area; which are responsive to the unique needs and resources of that area; and which take into account and are consistent with the national guidelines for health planning policy issued by the federal secretary of health & human services with respect to supply, distribution and organization of health resources and services.

(s) "Home health agency" is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services including, but not limited to, physical, speech and occupational therapy and nutritional and medical social services, to persons in their place of residence on a part-time or intermittent basis.

(t) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(u) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services above the level of room and board.

(v) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service. Each long-range plan shall consist of the information required by the state agency in regulations adopted pursuant to section eight of this article.

(w) "Major medical equipment" means a single unit of medical equipment or a single system of components with
related functions which is used for the provision of medical
and other health services and which costs in excess of one
hundred fifty thousand dollars, except that such term does
not include medical equipment acquired by or on behalf of a
clinical laboratory to provide clinical laboratory services
if the clinical laboratory is independent of a physician's
office and a hospital and it has been determined under Title
XVIII of the social security act to meet the requirements of
paragraphs ten and eleven of section 1861 (s) of such act,
Title 42 United States Code sections 1395x (10) and (11).
In determining whether medical equipment costs more than one
hundred fifty thousand dollars, the cost of studies, surveys,
designs, plans, working drawings, specifications, and other
activities essential to the acquisition of such equipment shall
be included. If the equipment is acquired for less than fair
market value, the term "cost" includes the fair market value.

(x) "Medically underserved population" means the popu-
lation of an urban or rural area designated by the state agency
as an area with a shortage of personal health services or a
population having a shortage of such services, after taking
into account unusual local conditions which are a barrier to
accessibility or availability of such services. Such designation
shall be in regulations adopted by the state agency pursuant to
section eight of this article, and the population so designated
may include the state's medically underserved population
designated by the federal secretary of health and human ser-
dices under section 330(b) (3) of the public health service act,
as amended, Title 42 United States Code section 254(b) (3).

(y) "New institutional health service" means such service
as described in section three of this article.

(z) "Offer" when used in connection with health services,
means that the health care facility or health maintenance
organization holds itself out as capable of providing, or as
having the means for the provision of, specified health services.

(aa) "Person" means an individual, trust, estate, partner-
ship, committee, corporation, association and other organi-
zations such as joint-stock companies and insurance companies,
a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(bb) “Physician” means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state.

(cc) “Proposed new institutional health service” means such service as described in section three of this article.

(dd) “Psychiatric hospital” means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(ee) “Rehabilitation facility” means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(ff) “Review agency” means an agency of the state designated by the governor as the agency for the review of state agency decisions.

(gg) “Skilled nursing facility” means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(hh) “State agency” means that agency of state government selected by the governor and designated as the state health planning and development agency in an agreement entered into pursuant to section 1521 of the public health service act, as amended, Title 42 United States Code section 300m.

(ii) “State health plan” means the document approved by the governor after preparation by the statewide health coordinating council pursuant to section 1524 (c) (2) of the public health service act, as amended, Title 42 United States Code section 300m-3 (c) (2).
"Statewide health coordinating council" means the body established pursuant to section 1524 of the public health service act, as amended, Title 42 United States Code section 300m-3, to advise the state agency.

"Substantial change to the bed capacity" of a health care facility means a change, with which a capital expenditure is associated, in any two-year period of ten or more beds or more than ten percent, whichever is less, of the bed capacity of such facility that increases or decreases the bed capacity, redistributes beds among various categories, or relocates beds from one physical facility or site to another. A series of changes to the bed capacity of a health care facility in any two-year period, each less than ten beds or ten percent of the bed capacity of such facility, but which when taken together comprise ten or more beds or more than ten percent of the bed capacity of such facility, whichever is less, is a substantial change to the bed capacity.

"Substantial change to the health services" of a health care facility means the addition of a health service which is offered by or on behalf of the health care facility and which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered, or the termination of a health service which was offered by or on behalf of the facility.

"To develop," when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

"Tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

§16-2D-3. Certificate of need.

Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and
receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this sentence is legally unenforceable. For purposes of this article, a proposed “new institutional health service” includes:

(a) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(c) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset, or

(2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, on the date on which the gift is completed under state law.
(d) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(e) The addition of health services which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of such health care facility or health maintenance organization within the twelve-month period prior to the time such services would be offered;

(f) The deletion of one or more health services, previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which deletion is associated with a capital expenditure;

(g) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(h) The acquisition of major medical equipment which will be owned by or located in a health care facility;

(i)(1) The acquisition of major medical equipment which will not be owned by or located in a health care facility unless:

(A) At least thirty days before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person provides written notice to the state agency of such person's intent to acquire such equipment and of the use that will be made of the equipment; and

(B) Within thirty days after the date the state agency receives such notice, the state agency finds that the equipment will not be used to provide services for inpatients of a hospital.

(2) The notice provided for in part (A), subparagraph (1), subdivision (i) of this section shall contain all information the
(3) For purposes of subdivision (i) of this section, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of it for less than fair market value shall be considered an acquisition of major medical equipment if its fair market value is at least one hundred fifty thousand dollars.

(4) If major medical equipment not located in a health care facility is acquired without a certificate of need pursuant to section four of this article and at any time it is proposed to use that equipment to serve inpatients of a hospital, a certificate of need shall be issued before such equipment is so used, unless the use is one described in subparagraph (5), subdivision (i) of this section.

(5) For purposes of subdivision (i) of this section, an acquisition of major medical equipment is not required to be reviewed if its proposed use is to provide services to inpatients of a hospital only on a temporary basis in the case of a natural disaster, a major accident, or equipment failure. The state agency may, by regulations adopted pursuant to section eight of this article, specify additional circumstances under which acquisitions of major medical equipment which will not be owned or located in a health care facility are not required to be reviewed: Provided, That such additional circumstances are acceptable to the federal secretary of health and human services.

(6) The state agency may not make any requirement in addition to this subdivision for a certificate of need for an acquisition of major medical equipment which will not be owned or located in a health care facility;

(j) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subdivision "substantial change" shall be defined by the state agency in regulations adopted pursuant to section eight of this article.
§16-2D-4. Exemptions from certificate of need program.

(a) Except as provided in subdivision (i), section three of this article, nothing in this article or the rules and regulations adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of: (1) Private offices of physicians, private clinics of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boarding-houses which provide medical, nursing personnel and health related services; and (4) the remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

(b) (1) A certificate of need is not required for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provisions of an inpatient institutional health service, if with respect to such offering, acquisition or obligation, the state agency has, upon application under subdivision (2), subsection (b) of this section, granted an exemption to:

(A) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or
(B) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

(C) A health care facility, or portion thereof, if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and on the date the application is submitted under subdivision (2), subsection (b) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the new institutional health service will be individuals enrolled with such organization.

(2) (A) A health maintenance organization, combination of health maintenance organizations, or other health care facility is not exempt under subdivision (1), subsection (b) of this section from obtaining a certificate of need unless:

(i) It has submitted, at such time and in such form and manner as the state agency shall prescribe, an application for such exemption to the state agency and the appropriate health systems agency;

(ii) The application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the state agency may require to determine if the organization or combination meets
(iii) The state agency approves such application.

(B) The state agency shall approve an application submitted under subparagraph (A), subdivision (2), subsection (b) of this section if it determines that the applicable requirements of subdivision (1), subsection (b) of this section are met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) A health care facility, or any part thereof, or medical equipment with respect to which an exemption was granted under subdivision (1), subsection (b) of this section may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C), subdivision (1), subsection (b) of this section which was granted an exemption under subdivision (1), subsection (b) of this section may not be used by any person other than the lessee described in subparagraph (C), subdivision (1), subsection (b) of this section unless:

(A) The state agency issues a certificate of need approving the sale, lease, acquisition, or use; or

(B) The state agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or to use the facility is:

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of part (i), subparagraph (A), subdivision (1), subsection (b) of this section, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of parts (ii) and (iii), subparagraph (A), subdivision (1), subsection (b) of this section; or

(ii) A health care facility which meets the inpatient, enrollment, and accessibility requirements of parts (i), (ii) and
(iii), subparagraph (B), subdivision (1), subsection (b) of this section and with respect to its patients meets the enrollment requirements of part (iv), subparagraph (B), subdivision (1), subsection (b) of this section.

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need requirements apply only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under subdivision (1), subsection (b) of this section.

(5) The state agency shall establish the period within which approval or disapproval by the state agency of applications for exemptions under subdivision (1), subsection (b) of this section shall be made.

(c) (1) A health care facility is not required to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, the addition of health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the health care facility provides the notice required in subdivision (2), subsection (c) of this section and the state agency does not find, within sixty days after it receives such notice, that the acquisition, offering or obligation will, or will have the effect to:

(A) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(B) Result in a substantial change to the bed capacity of the facility; or

(C) Result in a substantial change to the health services of the facility.
(2) Before a health care facility acquires major medical equipment to be used solely for research, offers a health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the state agency of such facility's intent and the use to be made of such medical equipment, health service, or capital expenditure.

(3) If major medical equipment is acquired, a health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering, or obligation as provided in subdivision (1), subsection (c) of this section, such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraphs (A), (B) and (C), subdivision (1), subsection (c) of this section unless the state agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term “solely for research” includes patient care provided on an occasional and irregular basis and not as part of a research program.

(d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2), subsection (d) of this section is not filed in accordance with that subdivision with respect to such acquisition; or (B) the state agency finds, within thirty days after the date it receives a notice in accordance with subdivision (2), subsection (d) of this section with respect to such acquisition, that the services or bed capacity of the facility will be changed by reason of said acquisition.
(2) Before any person enters into a contractual arrangement to acquire an existing health care facility, such person shall notify the state agency of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given. The notice shall contain all information the state agency requires in accordance with subsections (e) and (u), section seven of this article.

(e) The state agency shall adopt regulations, pursuant to section eight of this article, wherein criteria are established to exempt from review the addition of certain health services, not associated with a capital expenditure, that are projected to entail annual operating costs of less than the expenditure minimum for annual operating costs. For purposes of this subsection, “expenditure minimum for annual operating costs” means seventy-five thousand dollars for the twelve-month period beginning the first day of October, one thousand nine hundred seventy-nine, and for each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum for annual operating costs to reflect the impact of inflation.

§16-2D-5. Powers and duties of state health planning and development agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the statewide health coordinating council and the designated health systems agencies for health service areas located in whole or in part within the state in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek the advice and assistance
of other persons, organizations, and other state agencies in
the performance of the state agency's responsibilities under this
article.

(d) For health services for which competition appropriately
allocates supply consistent with health systems plans and the
state health plan, the state agency shall, in the performance
of its functions under this article, give priority, where ap-
propriate to advance the purposes of quality assurance, cost
effectiveness, and access, to actions which would strengthen
the effect of competition on the supply of such services.

(e) For health services for which competition does not
or will not appropriately allocate supply consistent with
health systems plans and the state health plan, the state
agency shall, in the exercise of its functions under this
article, take actions, where appropriate to advance the pur-
poses of quality assurance, cost effectiveness, and access and
the other purposes of this article, to allocate the supply of such
services.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsections (f) and (g) of
section nine of this article, in making its determination as
to whether a certificate of need shall be issued, the state
agency shall, at a minimum, consider all of the following
criteria that are applicable, but in the case of a health
maintenance organization or an ambulatory care facility or
health care facility controlled, directly or indirectly, by
a health maintenance organization or combination of health
maintenance organizations, the criteria considered shall be
only those set forth in subdivision (12) of this subsection:

(1) The recommendation of the designated health systems
agency for the health service area in which the proposed
new institutional health service is to be located;

(2) The relationship of the health services being reviewed
to the state health plan and to the applicable health systems
plan and annual implementation plan adopted by the designated
health systems agency for the health service area in which
the proposed new institutional health service is to be located;

(3) The relationship of services reviewed to the long-
range development plan of the person providing or proposing
such services;

(4) The need that the population served or to be served
by such services has for such services proposed to be offered
or expanded, and the extent to which all residents of the
area, and in particular low income persons, racial and ethnic
minorities, women, handicapped persons, other medically
underserved population, and the elderly, are likely to have
access to those services;

(5) The availability of less costly or more effective alter-
native methods of providing such services to be offered,
expanded, reduced, relocated or eliminated;

(6) The immediate and long-term financial feasibility
of the proposal as well as the probable impact of the pro-
posal on the costs of and charges for providing health services
by the person proposing the new institutional health service;

(7) The relationship of the services proposed to the
existing health care system of the area in which such services
are proposed to be provided;

(8) In the case of health services proposed to be provided,
the availability of resources, including health care providers,
management personnel, and funds for capital and operating
needs, for the provision of the services proposed to be pro-
vided and the need for alternative uses of these resources as
identified by the state health plan, applicable health systems
plan and annual implementation plan;

(9) The appropriate and nondiscriminatory utilization
of existing and available health care providers;

(10) The relationship, including the organizational rela-
tionship, of the health services proposed to be provided to
ancillary or support services;

(11) Special needs and circumstances of those entities
which provide a substantial portion of their services or re-
sources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers.

(12) To the extent not precluded by subdivision (1), subsection (f), section nine of this article, the special needs and circumstances of health maintenance organizations. These needs and circumstances shall be limited to:

(A) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization for the health services proposed to be provided by the organization; and

(B) The availability of the new health services from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(i) Would be available under a contract of at least five years duration;

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization;

(iii) Would cost no more than if the services were provided by the health maintenance organization; and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization;

(13) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(14) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that
the population presently served has for the service, the extent
to which that need will be met adequately by the proposed
relocation or by alternative arrangements, and the effect of the
reduction, elimination or relocation of the service on the
ability of low income persons, racial and ethnic minorities,
women, handicapped persons, other medically underserved
population, and the elderly, to obtain needed health care;

(15) In the case of a construction project: (A) The
cost and methods of the proposed construction, including
the costs and methods of energy provision and (B) the
probable impact of the construction project reviewed on the
costs of providing health services by the person proposing
such construction project and on the costs and charges to
the public of providing health services by other persons;

(16) In the case of health services proposed to be pro-
vided, the effect of the means proposed for the delivery
of proposed health services on the clinical needs of health
professional training programs in the area in which such
services are to be provided;

(17) In the case of health services proposed to be pro-
vided, if such services are to be available in a limited number
of facilities, the extent to which the schools in the area for
health professions will have access to the services for training
purposes;

(18) In the case of health services proposed to be pro-
vided, the extent to which such proposed services will be
accessible to all the residents of the area to be served by such
services;

(19) In accordance with section five of this article, the
factors influencing the effect of competition on the supply
of the health services being reviewed;

(20) Improvements or innovations in the financing and
delivery of health services which foster competition, in ac-
cordance with section five of this article, and serve to pro-
mote quality assurance and cost effectiveness;

(21) In the case of health services or facilities proposed
to be provided, the efficiency and appropriateness of the
use of existing services and facilities similar to those proposed;

(22) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(23) In the case where an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The state agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(24) The special circumstances of health care facilities with respect to the need for conserving energy;

(25) The contribution of the proposed service in meeting the health related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan, applicable health systems plan and annual implementation plan, as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant’s services in comparison to the percentage of the population in the applicant’s service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations
requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which medicare, medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by house staff and admission by personal physician.

(26) The existence of a mechanism for soliciting consumer input into the health care facility's decision making process.

(b) The state agency may include additional criteria which it prescribes by regulations adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(d) An application for a certificate of need may not be made subject to any criterion not contained in this article or not contained in regulations adopted pursuant to section eight of this article.

(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency makes, in addition to findings required in section nine of this article, each of the following findings in writing:

(1) That superior alternatives to such services in terms of cost, efficiency and appropriateness do not exist and the development of such alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new con-
struction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

§16-2D-7. Procedures for certificate of need reviews.

(a) Prior to submission of an application for a certificate of need, the state agency shall require the submission of long-range plans by health care facilities with respect to the development of proposals subject to review under this article. The plans shall be in such form and contain such information as the state agency shall require.

(b) An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. Persons proposing new institutional health services shall submit letters of intent not less than fifteen days prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

(c) The state agency may adopt regulations pursuant to section eight of this article for:

(1) Provision for applications, and recommendations from the health systems agencies, to be submitted in accordance with a timetable established by the state agency;

(2) Provision for such reviews to be undertaken in a timely fashion; and

(3) Except for proposed new institutional health services which meet the requirements for consideration under subsection (g), section nine of this article with regard to the elimination or prevention of certain imminent safety hazards or to comply with certain licensure or accreditation standards, provision for all completed applications pertaining to similar
types of services, facilities or equipment to be considered in relation to each other, at least twice a year.

(d) An application for a certificate of need shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure.

(e) The application shall be in such form and contain such information as the state agency shall establish by rule or regulation, but requests for information shall be limited to only that information which is necessary for the state agency to perform the review.

(f) Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency shall seek the advice of the designated health systems agency for the area in which the proposed new institutional health service will be located to determine if the application is complete and the state agency may request additional information from the applicant.

(g) The state agency shall provide timely written notice to the applicant and to all affected persons of the beginning of the review, and to any person who has asked the state agency to place the person's name on a mailing list maintained by the state agency. Notification shall include the proposed schedule for review, the period within which a public hearing during the course of the review may be requested by affected persons, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For the purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(h) Written notification to members of the public and third-party payers may be provided through newspapers of general circulation in the applicable health service area and public information channels; notification to all other affected
persons shall be by mail which may be as part of a news-
letter.

(i) If, after a review has begun, the state agency or the
health systems agency requires the person subject to the
review to submit additional information respecting the sub-
ject of the review, such person shall be provided at least
fifteen days to submit the information and the state agency
shall, at the request of such person, extend the review
period by fifteen days. This extension applies to all other
applications which have been considered in relation to the
application for which additional information is required.

(j) The state agency shall seek the recommendation of
the designated health systems agency for the health service
area in which the proposed new institutional health service
is to be located as to whether a certificate of need should
be issued. The state agency shall assist the designated health
systems agency in the review of applications by supplying
information and data on those proposed new institutional
services which have statewide implications.

(k) The state agency shall adopt schedules for reviews
which provide that no review may, to the extent practicable,
take longer than ninety days from the date that notification,
as described under subsection (g) of this section, is sent to
the applicant to the date of the final decision of the state
agency, and in the case of expedited applications, may by
regulations adopted pursuant to section eight of this article
provide for a shortened review period.

(I) The state agency shall adopt criteria for determining
when it would not be practicable to complete a review within
ninety days.

(m) The schedule shall set forth the period within which
the health systems agency shall complete its review and
provide its recommendation with respect to such new in-
stitutional health service to the state agency: Provided, That
the period allotted by the state agency to a health systems
agency for completion of its review and submission of its
recommendations may not be less than sixty days, except with
the written consent of the health systems agency.
The state agency shall provide a public hearing in the course of agency review if requested by any affected person and the state agency may on its own initiate such a public hearing:

1. The state agency shall, prior to such hearing, provide notice of such hearing and shall conduct such hearing in accordance with administrative hearing requirements in section five, article three, chapter twenty-nine-a of this code and its procedure adopted pursuant to this section.

2. In a hearing any person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter.

3. The state agency shall maintain a verbatim record of the hearing.

4. After the commencement of a hearing on the applicant's application and before a decision is made with respect to it, there may be no ex parte contracts between (a) the applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate for the applicant and (b) any person in the state agency who exercises any responsibility respecting the application.

5. The state agency may not impose fees for such a public hearing.

6. If a public hearing is not conducted during the review of a new institutional health service, the state agency may, by regulations adopted pursuant to section eight of this article, provide for a file closing date during the review period after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need, except that the file closing date shall not be set prior to the date the state agency receives the recommendation of the applicable health systems agency.
with respect to the proposed new institutional health service
if the state agency receives such recommendation before the
sixty-first day for the review. A detailed itemization of
documents in the state agency file on a proposed new insti-
tutional health service shall, on request, be made available by
the state agency at any time before the file closing date.

(p) The extent of additional information received by the
state agency from the applicant for a certificate of need
after a review has begun on the applicant’s proposed new
institutional health service, with respect to the impact on
such new institutional health service and additional informa-
tion which is received by the state agency from the applicant
after the state agency has received the applicable health systems
agency’s recommendation, may be cause for the state agency
to determine the application to be a new proposal, subject
to a new review cycle.

(q) The state agency shall in timely fashion notify, upon
request, providers of health services and other persons subject
to review under this article of the status of the state agency
review of new institutional health services subject to review,
findings made in the course of such review, and other appro-
priate information respecting such review.

(r) The state agency shall prepare and publish, at least
annually, reports of reviews completed and being conducted,
with general statements about the status of each review still
in progress and the findings and rationale for each completed
review since the publication of the last report.

(s) The state agency shall provide for access by the
general public to all applications reviewed by the state agency
and to all other pertinent written materials essential to agency
review.

(t) (1) Any person may request in writing a public hearing
for purposes of reconsideration of a state agency decision.
No fees may be imposed by the state agency for the hearing.
For purposes of this section, a request for a public hearing
for purposes of reconsideration shall be deemed to have
shown good cause if, in a detailed statement, it:
(A) Presents significant, relevant information not previously considered by the state agency, and demonstrates that with reasonable diligence the information could not have been presented before the state agency made its decision;

(B) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;

(C) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or

(D) Provides such other bases for a public hearing as the state agency determines constitutes good cause.

(2) To be effective a request for such a hearing shall be received within thirty days after the date upon which all parties received notice of the state agency decision, and the hearing shall commence within thirty days of receipt of the request.

(3) Notification of such public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area in which the new institutional health service is proposed to be offered or developed, and shall be sent to others upon request.

(4) The state agency shall hold public reconsideration hearings in accordance with the provisions for administrative hearings contained in:

(A) Its adopted procedures;

(B) Ex parte contact provisions of subdivision (4), subsection (n) of this section; and

(C) The administrative procedures for contested cases contained in article five, chapter twenty-nine-a of this code.

(5) The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.
HEALTH

(6) A decision of the state agency following a reconsideration hearing shall be considered a decision of the state agency for purposes of sections nine and ten of this article and for purposes of the notification of the status of review, findings and annual report provisions of subsections (q) and (r) of this section.

(u) The state agency may adopt regulations pursuant to section eight of this article for reviews and such regulations may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed.

(v) Notwithstanding other provisions of this article, the state agency shall adopt rules and regulations for determining when there is an application which warrants expedited review. If procedures adopted by the state agency to handle expedited applications do not conform to the provisions of this article, such procedures shall be approved by the federal secretary of health and human services and shall be adopted as regulations pursuant to section eight of this article.

§16-2D-8. Agency to promulgate additional rules and regulations.

(a) The state agency is hereby empowered to promulgate additional rules and regulations:

(1) To carry out the provisions of this article; and

(2) To assure hospitals' compliance with requests for information concerning rates charged for each of the twenty-five most frequently used hospital services in the state including the average semiprivate and private room rates.

(b) All rules and regulations shall be promulgated pursuant to chapter twenty-nine-a of this code and as described herein. In addition, before adopting proposed rules and regulations the state agency shall give interested persons an opportunity to offer written comments on the rules and regulations, or any revisions thereof, which it proposes to adopt, as follows:

(1) The state agency shall distribute copies of its proposed review rules and regulations, and proposed revisions thereof, to statewide health agencies and organizations, the statewide
health coordinating council, and each health systems agency
for a health service area located in whole or in part within
the state and any agency which establishes rates for health
care facilities in the state;

(2) The state agency shall publish, in at least one newspa-
paper in each planning and development region in this state,
a notice stating that rules and regulations for review of certif-
icate of need applications or any revisions thereof, have been
proposed for adoption and are available at specified addresses
for inspection and copying by interested persons. In addition,
notice may be given through other public information channels;
and

(3) The state agency shall distribute copies of its adopted
review rules and regulations, and any revisions thereof, to the
agencies and organizations specified in this section and to the
secretary of health & human services, and shall provide
such copies to other persons upon request.

§16-2D-9. Agency to render final decision; issue certificate of
need; write findings; specify capital expenditure
maximum.

(a) Only the state agency, or the appropriate administra-
tive or judicial review body, may issue, deny or withdraw
certificates of need, grant exemptions from certificate of need
reviews, or determine that certificate of need reviews are not
required.

(b) Except as provided in subsection (f) of this section, a
certificate of need may only be issued if the proposed new in-
stitutional health service is:

(1) Found to be needed; and

(2) Except in emergency circumstances that pose a threat
to public health, consistent with the state health plan: Pro-
vided, That if a health care facility which is controlled, direct-
ly or indirectly, by a health maintenance organization applies
for a certificate of need for a proposed new institutional health
service, the state agency may not disapprove the application
solely because such an institutional health service is not dis-
cussed in the state health plan, applicable health systems plan,
or annual implementation plan.
(c) The state agency shall render a final decision on every application for a certificate of need or application for exemption in the form of an approval, a denial, or an approval with conditions. Any decision of the state agency with respect to a certificate of need, or exemption, shall be based solely on:

(1) The review of the state agency conducted in accordance with procedures and criteria in this article and in regulations adopted pursuant to section eight of this article; and

(2) The record established in administrative proceedings held with respect to the certificate of need or exemption.

(d) Approval with conditions does not give the state agency authority to mandate new institutional health services not proposed by the health care facility or health maintenance organization. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article or in rules and regulations adopted pursuant to section eight of this article.

(e) (1) For each proposed new institutional health service it approves, the state agency shall, in addition to the written findings required in subsection (e), section six of this article, make a written finding, which shall take into account the current accessibility of the facility as a whole, on the extent to which the new institutional health service will meet the criteria in subdivisions (4), (14), and (25), subsection (a), section six of this article regarding the needs of medically underserved population, except in the following cases:

(A) Where the proposed new institutional health service is one described in subsection (g) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(B) Where the new institutional health service is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

(C) Where the new institutional health service is proposed by or on behalf of a health care facility which is controlled, directly or indirectly, by a health maintenance organization.
(2) If the state agency disapproves a proposed new institutional health service for failure to meet the needs of medically underserved populations, it shall so state in a written finding.

(f) (1) Notwithstanding review criteria in subdivision (12), subsection (a), section six of this article, if a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, such application shall be approved by the state agency if the state agency finds, in accordance with criteria prescribed by the state agency by regulations adopted pursuant to section eight of this article, that:

(A) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(B) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

(2) Except as provided in subdivision (1), subsection (b), section four of this article, a health care facility, or any part thereof, or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the state agency issues a certificate of need approving the sale, acquisition or lease.

(g) (1) Notwithstanding review criteria in section six of this article, an application for a certificate of need shall be approved, if the state agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of such capital ex-
penditure is consistent with the state health plan, for a capital expenditure which is required:

(A) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations; or

(B) To comply with state licensure standards; or

(C) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the social security act or payments under the state plan for medical assistance approved under Title XIX of such act.

(2) An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in subparagraph (A), subdivision (1), subsection (g) or to comply with the standards described in either subparagraph (B) or (C), subdivision (1), subsection (g) of this section.

(h) (1) The state agency shall send its decision along with written findings to the person proposing the new institutional health service or exemption and to the health systems agency for the health service area in which the new service is proposed to be offered or developed and shall make it available to others upon request.

(2) In the case of a new institutional health service proposed by an health maintenance organization, the state agency shall send the written findings to the appropriate regional office of the federal department of health and human services at the time they are sent to the applicant.

(3) In any decision where the state agency finds that a proposed new institutional health service does not satisfy the criteria in subdivision (4), (14) and (25), subsection (a), section six of this article regarding the needs of medically underserved population, it shall so notify in writing the applicant and the appropriate regional office of the federal department of health & human services.
(i) In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service.

(j) The state agency shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The state agency shall prescribe the method used to determine capital expenditure maximums and shall adopt regulations pursuant to section eight of this article for the review of approved new institutional health services for which the capital expenditure maximum is exceeded or is expected to be exceeded.

(k) If the state agency makes a decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by the applicable health systems agency or is inconsistent with the goals of the applicable health systems plan or the priorities of the applicable annual implementation plan, the state agency shall, if its decision does not include a written, detailed statement of the reasons for the inconsistency, provide such a statement to such health systems agency.

(l) If the state agency fails to make a decision within the time period specified for the review, the applicant may, within one year following the expiration of such period, bring an action, at the election of the applicant, in either the circuit court of Kanawha County, or with the judge thereof in vacation, or in the circuit court of the county in which the applicant or any one of the applicants resides or does business, or with the judge thereof in vacation to require the state agency to approve or disapprove the application. An application for a proposed new institutional health service or exemption may not be approved or denied by the circuit court solely because the state agency failed to reach a decision.

§16-2D-10. Appeal of certificate of need decisions.

(a) A final decision of the state agency, including a state agency decision issued after a reconsideration, if such reconsideration was requested and granted under subsection (l),
section seven of this article, and the record upon which it
was made, shall, upon request of any affected person, or the
applicable health systems agency if the decision is inconsistent
with a recommendation made by the applicable health systems
agency to the state agency with respect to the certificate of
need, be reviewed by an agency of the state (other than the
state agency) designated by the governor. To be effective, such
request shall be received within thirty days after the date
upon which all parties received notice of the state agency de-
cision, and the hearing shall commence within thirty days of
receipt of the request.

(b) To the extent not inconsistent with this section, for the
purpose of administrative reviews of state agency decisions, the
review agency shall conduct its proceedings in conformance
with the West Virginia rules of civil procedure for trial courts
of record and the local rules for use in the civil courts of
Kanawha County and shall review appeals in accordance with
the provisions governing the judicial review of contested ad-
ministrative cases in section (4), article five, chapter twenty-
nine-a of this code, notwithstanding the exceptions of section
five, article five, chapter twenty-nine-a of this code.

(c) The decision of the reviewing agency shall be made
in writing within forty-five days after the conclusion of such
hearing.

(d) The written findings of the review agency shall be sent
to the person who requested the review, to the person proposing
the new institutional health service, to the health systems
agency requesting a review and to the state agency, and shall
be made available by the state agency to others upon request.

(e) The decision of the reviewing agency shall be considered
the final decision of the state agency; however, the reviewing
agency may remand the matter to the state agency for further
action or consideration.

(f) Upon the entry of a final decision by the reviewing
agency the designated health system agency, if the decision re-
specting the certificate of need is inconsistent with a recom-
mandation made by that health systems agency to the state
agency with respect to the certificate of need, and any other
“person adversely affected by the review” have standing in and may within thirty days after the date upon which all parties received notice of the decision of the review agency take an appeal at the election of the petitioner, in either the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any of the petitioners resides or does business, from any decision of the state agency granting, with or without conditions, denying or withdrawing a certificate of need or exemption. The decision of the review agency shall be reviewed by such circuit court in accordance with the provisions for the judicial review of administrative decisions contained in section four, article five, chapter twenty-nine-a of this code. For the purposes of this subsection, “person adversely affected by the review” includes the state agency, any person who meets the definition of affected person in section two of this article, and any person who participated in the proceeding before the state agency.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

(a) A certificate of need is nontransferable and shall be valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate or during the certification period the person proposing the new institutional health service shall provide the state agency such information on the development of the project as the state agency may request. The state agency shall periodically monitor capital expenditures obligated under certificates, determine whether sufficient progress is being made in meeting the timetable specified in the approved application for the certificate and whether there has been compliance with the application and any conditions of certification. The state agency shall take into account recommendations made by the health systems agency in making its determination. The certificate of need may be extended by the state agency for additional periods of time as are reasonably necessary to expenditiously complete the project. A certificate of need may no longer be in effect, and may no longer be required, after written notice of substantial compliance with the approved application and any conditions of certification is issued to the applicant,
after the activity is undertaken for which the certificate of need was issued, and after the state agency is provided written notice of such undertaking. The person proposing a new institutional health service may not be issued a license therefor until the state agency has issued a written notice of substantial compliance with the approved application and any conditions of certification, nor may a new institutional health service be used until such person has received such notice. A new institutional health service may not be found to be in substantial compliance with the approved application and any conditions of certification if there is a substantial change, as defined in regulations adopted pursuant to subsection (j), section three of this article, in the approved new institutional health service for which change a certificate of need has not been issued.

(b) (1) The certificate of need may be withdrawn by the state agency for:

(A) Insufficient progress in meeting the timetable specified in the approved application for the certificate and for not making a good faith effort to meet it in developing the project; or

(B) Noncompliance with any conditions of certification; or

(C) A substantial change, as defined in regulations adopted pursuant to subsection (j), section three of this article, in an approved new institutional health service for which change a certificate of need has not been issued; or

(D) Material misrepresentation by an applicant upon which the state agency relied in making its decision; or

(E) Other reasons that may be established by the state agency in regulations adopted pursuant to section eight of this article.

(2) Any decision of the state agency to withdraw a certificate of need shall be based solely on:

(A) The provisions of this article and on regulations adopted in accordance with section eight of this article; and
(B) The record established in administrative proceedings held with respect to the state agency's proposal to withdraw the certificate.

(3) In the case of a proposed withdrawal of a certificate of need:

(A) After commencement of a hearing on the state agency's proposal to withdraw a certificate of need and before a decision is made on withdrawal, there may be no exparte contacts between (i) the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and (ii) any person in the state agency who exercises responsibility respecting withdrawal of the certificate;

(B) The state agency shall follow the notification of review provisions of subsections (g) and (h), the public hearing provisions of subsection (n), the notification of the status of review and findings provisions of subsection (g), the annual report provisions of subsection (r), and the reconsideration provisions of subsection (t), all of section seven of this article, and the conditional decision provisions of subsection (d), the notification of decision and findings provisions of subsection (h), and the statement to the applicable health systems agency provisions of subsection (k), all of section nine of this article; and

(C) Appeals of withdrawals of certificates of need shall be made pursuant to section ten of this article.

(4) A new institutional health service may not be acquired, offered, or developed within this state if a certificate of need authorizing that new institutional health service has been withdrawn by the state agency and the acquisition, offering, or development of the new institutional health service is subject to review under this article.

§16-2D-12. Denial or revocation of license for operating without certificate.

1 Any person acquiring, offering or developing any new
institutional health service for which a certificate of need
is required under this article without first obtaining a certificate
of need therefor as herein provided, or who violates any of
the provisions of this article is subject to denial or revocation
of a license, in whole or in part, to operate such institutional health service or facility. Upon a showing to the
state agency that any person is offering or developing any
new institutional health service within the meaning of this
article without having first obtained a certificate of need
therefor as provided herein or that such person is otherwise
in violation of the provisions of this article, the state agency
shall provide such person with written notice which notice shall
state the nature of the violation and the time and place at which
such person shall appear to show good cause why its license
should not be revoked or denied, at which time and place such
person shall be afforded a reasonable opportunity to present
testimony and other evidence in support of its position. If,
thereafter, the state agency determines that such person's
license to operate such institutional health service or facility
should be revoked or denied, the state agency shall issue an
order, in writing, to the appropriate responsible licensing
agency of the state, requiring that such person's license to
operate such institutional health service or facility be revoked
or denied, which order shall be binding upon such licensing
agency.

§16-2D-13. Injunctive relief; civil penalty.

(a) In addition to all other remedies, and aside from
various penalties provided by law, if any person acquires,
offers or develops any new institutional health service for
which a certificate of need is required under this article
without first having a certificate of need therefor as herein
provided, or violates any other provision of this article
or any lawful rule or regulation promulgated thereunder, af-
fected persons, as defined in section two of this article, and the
applicable health systems agency may maintain and the state
agency shall request that the attorney general maintain a civil
action in the circuit court of the county wherein such viola-
tion has occurred, or wherein such person may be found, to
enjoin, restrain or prevent such violation. No injunction bond shall be required to be filed in any such proceeding.

(b) The state agency may assess a civil penalty for violation of this article. Upon the state agency determining that there is probable cause to believe that any person is knowingly offering, developing, or has acquired any new institutional health service subject to certificate of need review without having first obtained a certificate of need therefor or that any person is otherwise in violation of the provisions of this article, or any lawful rule or regulation promulgated thereunder, the state agency shall provide such person with written notice which shall state the nature of the alleged violation and the time and place at which such person shall appear to show good cause why a civil penalty should not be imposed, at which time and place such person shall be afforded an opportunity to cross-examine the state agency's witnesses and afforded an opportunity to present testimony and other evidence in support of his position. The hearing shall be conducted in accordance with the administrative hearing provisions of section four, article five, chapter twenty-nine-a of this code.

If, after reviewing the record of such hearing, the state agency director determines that such person is in violation of the certificate of need law, the state agency shall assess a civil penalty of not less than five hundred dollars nor more than twenty-five thousand dollars. In determining the amount of the penalty, the state agency shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment in writing, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the state agency within thirty days, the attorney general may institute a civil action in the circuit court of the county wherein such violation has occurred, or wherein such person may be found to recover the amount of the assessment. In any such civil action, the scope of the court's review of the state agency's action, which shall include a review of the amount of the assessment, shall be as provided in section four, article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases.
AN ACT to amend and reenact sections ten and eleven, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to removing the requirement that a solution of silver nitrate be placed in the eyes of the newborn babe; providing that other appropriate medications may be placed in the eyes of the newborn; providing that the director of the health department shall establish and distribute to appropriate health care facilities a list of such appropriate medications; and further providing that each county clerk shall certify to the county prosecuting attorney birth reports failing to show installation of such appropriate medication in the eyes of newborns.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, AND OTHER INFECTIOUS DISEASES.

§16-3-10. Inflammation of eyes of newborn—Use of an appropriate medication as prophylactic.

§16-3-11. Same—Duty of clerk of county commission.

§16-3-10. Inflammation of eyes of newborn—Use of an appropriate medication as prophylactic.

1 It shall be unlawful for any physician, nurse-midwife or midwife, practicing midwifery, or other health care professional to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, the contents of a single-use tube of an ophthalmic ointment containing one percent tetracycline or one half of one percent erythromycin or the equivalent dosage of such medications or other appropriate medication approved by the director for prevention of inflammation of the eyes of the newborn. Every physician, nurse-midwife or midwife or other health care professional shall, in making a
§16-3-11. Same—Duty of clerk of county commission.

It shall be the duty of the clerk of the county commission of each county, on or before the fifteenth day of each month, to certify to the prosecuting attorney of his county all reports of births filed during the preceding calendar month which fail to show that an appropriate medication for prevention of inflammation of the eyes of the newborn hereinafter provided for was instilled.

CHAPTER 124

(Com. Sub. for S. B. 95—By Mr. Susman and Mr. Harman)

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

AN ACT to amend and reenact sections two, three, three-a, four, five, six, seven, eight, nine, ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain revisions to the public service district laws; requiring that the metes and bounds of any proposed public service district be included in any order or petition for the creation of such district; changing the number of residents within the limits of a proposed public service district required to petition for the creation of such district from one hundred voters to twenty-five percent of the registered voters who reside within the limits of such proposed public service district; removing the requirement that the boundaries of any public service district follow magisterial district lines; encouraging the expansion or merger of existing public service districts; providing for the dissolution of any inactive public service district by petition or by an order of the county commission in the same manner as required for its
creation; providing that applicable provisions pertaining to referendum shall not apply if results of referendum could adversely affect existing financial indebtedness of district; requiring that county commissions file with the secretary of state a list of all public service districts and their current board members; requiring certain qualifications for public service district board members; removing the requirement that a municipal corporation must have a population of at least three thousand in order to appoint a board member; requiring any board member vacancy to be filled for the unexpired term within thirty days; requiring the board to organize within thirty days following the first appointments; requiring a record of all board proceedings, including the minutes of all board meetings, to be filed with the county commission; requiring the board to meet at least monthly; providing that the number of signatures required on any petition for the removal of any member of the board shall be twenty-five percent of the registered voters who reside within the limits of the proposed public service district; requiring that ten days' notice of a hearing be given to any board member subject to removal; salaries of board members; qualifications; maximum salary permitted of board member; providing board members be reimbursed for expenses; providing for proper public notice of any board meeting; clarifying that the general manager of the board be an employee of the board; providing that a general manager may serve more than one public service district or municipal water system, or both; requiring that the board have supervision and control of all public service properties donated to the district; providing that contracts entered into by the public service district for emergency construction work or purchase of equipment may be entered without notice and publication requirements; requiring the approval of the public service commission whenever any district acquires, constructs, establishes, improves or extends any public service properties of the same kind as, and located within, any municipal corporation within the limits of such district; allowing the board to make, enact and enforce all rules and regulations in connection with the administration of public service district properties owned or controlled by such district; removing the requirement that the board or any municipal corporation located within the district of such board shut off and discontinue sewer services to all delinquent users of such
services; permitting the public service commission to promulgate rules and regulations regarding the discontinuance of water and gas services for delinquent payment; authorizing any district furnishing sewer facilities to require connection with such facilities under certain circumstances; authorizing the public service district to pay under certain circumstances the costs incurred by the property owner for changes in plumbing; providing certain costs to be reflected in the users’ charge for approval of public service commission; providing for payment of rates and charges for sewer services after thirty-days notice of service availability; requiring the inclusion of payments to capital replacement accounts and bond payment schedules in the tentative budget prepared by the general manager and submitted to the board; requiring a copy of the budget, as adopted by the board, to be forwarded to the county commission; requiring a copy of an audit to be forwarded to the county commission and the public service commission; requiring the treasurer of a public service district to be responsible for maintaining financial records, including the duty to transfer such records to his successor; requiring that any order for the disbursement of district funds be reflected in the minutes of the board; providing for sale, lease or rental of water systems by district; authorizing a public service district to accept loans, grants or temporary advances to pay costs of construction or acquisition of water, sewer or gas facilities and for other authorized purposes from the United States, any federal or public agency, or any private party, and to enter into necessary contracts and agreements therewith; authorizing payment of loans, temporary advances, and interest thereon from bond proceeds, revenues of said systems and grants from said agencies and parties or combinations thereof; provides consent and approval of public service commission before public service district borrows money or issues revenue bonds; requirements of form for residents to file in opposition to public service district borrowing money or issuing revenue bonds; qualifications for public service commission consenting or approving public service district request to borrow money or issue revenue bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, four, five, six, seven, eight, nine,
ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

§16-13A-3a. Removal of members of public service board.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

§16-13A-5. General manager of board.

§16-13A-6. Employees of board.

§16-13A-7. Acquisition and operation of district properties.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.


§16-13A-11. Accounts; audit.

§16-13A-12. Disbursement of district funds.

§16-13A-18a. Sale, lease or rental of water system by district; distribution of proceeds.


§16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

1 The county commission of any county may on its own motion by order duly adopted propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient
to identify the territory to be embraced therein and the name
of such proposed district. Any territory may be included
regardless of whether or not such territory includes one or
more cities, incorporated towns or other municipal
corporations which own and operate any public service
properties and regardless of whether or not it includes one or
more cities, incorporated towns or other municipal
corporations being served by privately owned public service
properties: Provided, That the same territory shall not be
included within the boundaries of more than one public
service district except where such territory or part thereof is
included within the boundaries of a separate public service
district organized to supply water, sewerage services or gas
facilities not being furnished within such territory or part
thereof: Provided, however, That no city, incorporated town
or other municipal corporation shall be included within the
boundaries of such proposed district except upon the
adoption of a resolution of the governing body of such city,
incorporated town or other municipal corporation
consenting.

Such petition shall be filed in the office of the clerk of the
county commission of the county in which the territory to
constitute the proposed district is situated, and if such
territory is situated in more than one county, then such
petition shall be filed in the office of the clerk of the county
commission of the county in which the major portion of such
territory extends, and a copy thereof (omitting signatures)
shall be filed with each of the clerks of the county
commission of the other county or counties into which the
territory extends. The clerk of the county commission
receiving such petition shall present it to the county
commission of such county at the first regular meeting after
such filing or at a special meeting called for the consideration
thereof.

When the county commission of any county enters an order
on its own motion proposing the creation of a public service
district, as aforesaid, or when a petition for such creation is
presented, as aforesaid, the county commission shall at the
same session fix a date of hearing in such county on the
creation of the proposed public service district, which date so
fixed shall be not more than forty days nor less than twenty
days from the date of such action. If the territory proposed to
be included is situated in more than one county, the county
commission, when fixing a date of hearing, shall provide for
notifying the county commission and clerk thereof of each of
the other counties into which the territory extends of the date
so fixed. The clerk of the county commission of each county
in which any territory in the proposed public service district
is located shall cause notice of such hearing and the time and
place thereof, and setting forth a description of all of the
territory proposed to be included therein to be given by
publication 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
each county in which any territory in the proposed public
service district is located. The publication shall be at least ten
days prior to such hearing. In all cases where proceedings for
the creation of such public service districts are initiated by
petition as aforesaid the person filing the petition shall
advance or satisfactorily indemnify the payment of the cost
and expenses of publishing the hearing notice, and otherwise
the costs and expenses of such notice shall be paid in the first
instance by the county commission out of contingent funds
or any other funds available or made available for that
purpose. In addition to the notice required herein to be
published, there shall also be posted in at least five
conspicuous places in the proposed public service district, a
notice containing the same information as is contained in the
published notice. The posted notices shall be posted not less
than ten days before the hearing.

All persons residing in or owning or having any interest in
property in such proposed public service district shall have
an opportunity to be heard for and against its creation. At
such hearing the county commission before which the
hearing is conducted shall consider and determine the
feasibility of the creation of the proposed district. If the
county commission determines that the construction or
acquisition by purchase or otherwise and maintenance,
operation, improvement and extension of public service
properties by such public service district will be conducive to
the preservation of public health, comfort and convenience of
such area, the county commission shall by order create such
public service district and such order is conclusive and final
in that regard. If the commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district: Provided, That prior to refusing to enter such order, evidence must be presented to the satisfaction of the county commission that such expansion, merger or other procedure necessary to provide service to the area of the proposed district will be forthcoming: Provided, however, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating the district: Provided, That if at such hearing written protest is filed by thirty percent or more of the qualified voters registered and residing within said district, then the county commission shall not take any further action in creating such district unless the creation of such district is approved by a majority vote of the qualified registered voters voting at a referendum to be called by the county commission for such purpose. Such referendum shall be called and held in the manner provided in the general election laws of the state of West Virginia applicable thereto and the funds therefor shall be supplied from any county funds available for such purpose or from funds supplied from the persons who petitioned for the creation of such district. If a majority of the qualified registered voters participating in the referendum vote against the creation of the district, then such district shall not be created. If, however, a majority of the qualified registered voters participating in such referendum vote in favor of the creation of such district, then the county commission shall duly enter its order creating such district.
After the creation of such district the county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition, to enlarge the district, reduce the area of the district or dissolve the district if inactive all of the applicable provisions of this article providing for hearing, notice of hearing and protest shall apply with like effect as if a district were being created: Provided, however, That no expansion of a public service district may occur if the physical facilities of the public service district are determined by the appropriate county commission to be inadequate to provide such expanded service. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided further, That the applicable provisions pertaining to referendum shall not apply if the results of a referendum could adversely affect the existing financial indebtedness of the district. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any such public service district, it shall thereafter be a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each such district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts
necessary or incidental to its purposes, including contracts
with any city, incorporated town or other municipal
corporation located within or without its boundaries for
furnishing wholesale supply of water for the distribution
system of such city, town or other municipal corporation, and
contract for the operation, maintenance, servicing, repair and
extension of any properties owned by it or for the operation
and improvement or extension by such district of all or any
part of the existing municipally owned public service
properties of any city, incorporated town or other municipal
corporation included within such district: Provided, That no
such contract shall extend beyond a maximum of forty years,
but provisions may be included therein for a renewal or
successive renewals thereof and shall conform to and comply
with the rights of the holders of any outstanding bonds issued
by such municipalities for such public service properties.

The powers of each such public service district shall be
vested in and exercised by a public service board consisting
of not less than three members, who shall be persons residing
within the district who have successfully completed a
training program to be established and administered by the
public service commission in conjunction with the
department of natural resources and the department of
health. Such members shall be appointed in the following
manner:

Each city, incorporated town or other municipal
corporation shall be entitled to appoint one member of such
board, and each such city, incorporated town or other
municipal corporation having a population in excess of
eighteen thousand shall be entitled to appoint one additional
member of such board for each additional eighteen thousand
population. The members of the board representing such
cities, incorporated towns or other municipal corporations
shall be residents thereof and shall be appointed by a
resolution of the governing bodies thereof and upon the filing
of a certified copy or copies of such resolution or resolutions
in the office of the clerk of the county commission which
entered the order creating such district, such persons so
appointed shall thereby become members of the board
without any further act or proceedings. If the number of
members of the board so appointed by the governing bodies
of cities, incorporated towns or other municipal corporations included in the district shall equal or exceed three, then no further members shall be appointed to such board and such members shall be and constitute the board of said district.

If no city, incorporated town or other municipal corporation is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members shall become members of and constitute the board of said district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three, and the additional member or members shall thereupon become members of such board; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by such county commission as aforesaid, shall be and constitute the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of such board, if any, to be appointed by the governing body or bodies thereof, shall be conclusively deemed to be the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which
such appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after such appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after January one of each year by selecting one of its members to serve as chairman and by appointing a secretary and a treasurer who need not be members of such board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform such other duties appertaining to the affairs of the district and shall receive such salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district’s operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-3a. Removal of members of public service board.

The county commission or any other appointive body creating or establishing a public service district under the provisions of this article may remove any member of the governing board thereof for consistent violations of any
provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created or failure to perform any other duty prescribed by law or for any misconduct in office, or upon written petition signed by twenty-five percent of the registered voters who reside within the limits of such proposed public service district: Provided, That such appointee shall be removed only after a full hearing of any complaint presented against him and after a ten-day notice of such hearing.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its members shall be fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed seven hundred fifty dollars per annum. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules and regulations of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided by section three, article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided the board may by resolution change the official or
corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

§16-13A-5. General manager of board.

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water service from a municipal water system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water system or public service district from which such water service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service.

§16-13A-6. Employees of board.

The board may in its discretion from time to time by
resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees.

§16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired, donated to or constructed by the district and shall maintain, operate, extend and improve the same: Provided, That no extension of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission to be inadequate to provide such expanded service. All contracts involving the expenditure by the district of more than two thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been 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 district. The publication shall not be less than ten days prior to the making of any such contract. If the public service commission determines an emergency situation exists within the public service district, all contracts involving the expenditure by the district of more than two thousand dollars for emergency construction work or for the emergency purchase of equipment and improvements, extensions or replacements, may be entered without compliance to notice inviting bids and publication requirements. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.
§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish
any facilities of the same kind within such city, incorporated
town or other municipal corporation without the consent of
such district.

For the purpose of acquiring any public service properties
or lands, rights or easements deemed necessary or incidental
for the purposes of the district, each such district has the right
of eminent domain to the same extent and to be exercised in
the same manner as now or hereafter provided by law for
such right of eminent domain by cities, incorporated towns
and other municipal corporations: Provided, That such board
may not acquire all or any substantial part of a privately
owned waterworks system unless and until authorized so to
do by the public service commission of West Virginia, and
that this section shall not be construed to authorize any
district to acquire through condemnation proceedings either
in whole or substantial part an existing privately owned
waterworks plant or system or gas facilities located in or
furnishing water or gas service within such district or
extensions made or to be made by it in territory contiguous to
such existing plant or system, nor may any such board
construct or extend its public service properties to supply its
services into areas served by or in competition with existing
waterworks or gas facilities or extensions made or to be made
in territory contiguous to such existing plant or system by the
owner thereof.

§16-13A-9. Rules and regulations; service rates and charges;
discontinuance of service; required water and
sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules
and regulations in connection with the acquisition,
construction, improvement, extension, management,
maintenance, operation, care, protection and the use of any
public service properties owned or controlled by the district,
and the board shall establish rates and charges for the
services and facilities it furnishes, which shall be sufficient at
all times, notwithstanding the provisions of any other law or
laws, to pay the cost of maintenance, operation and
depreciation of such public service properties and principal
of and interest on all bonds issued, other obligations incurred
under the provisions of this article and all reserve or other
payments provided for in the proceedings which authorized
the issuance of any bonds hereunder. The schedule of such
rates and charges may be based upon either (a) the
consumption of water or gas on premises connected with
such facilities, taking into consideration domestic,
commercial, industrial and public use of water and gas; or (b)
the number and kind of fixtures connected with such
facilities located on the various premises; or (c) the number of
persons served by such facilities; or (d) any combination
thereof; or (e) may be determined on any other basis or
classification which the board may determine to be fair and
reasonable, taking into consideration the location of the
premises served and the nature and extent of the services and
facilities furnished. Where water, sewer and gas services are
all furnished to any premises the schedule of charges may be
billed as a single amount for the aggregate thereof. Whenever
any rates, rentals or charges for services or facilities furnished
remain unpaid for a period of thirty days after the same
become due and payable, the property and the owner thereof,
as well as the user of the services and facilities shall be
delinquent until such time as all such rates and charges are
fully paid. The board may, under reasonable rules and
regulations promulgated by the public service commission,
shut off and discontinue water or gas services to all
delinquent users of either water or gas facilities, or both.

In the event that any city, incorporated town or other
municipal corporation included within the district owns and
operates separately either water facilities or gas facilities, and
the district owns and operates within such city, incorporated
town or other municipal corporation the other kind of
facilities, either water or gas facilities, as the case may be,
then the district and such city, incorporated town or other
municipal corporation may covenant and contract with each
other to shut off and discontinue the supplying of the kind of
facilities furnished by the district or such city, incorporated
town or other municipal corporation, as the case may be, for
the nonpayment of fees and charges for the other kind of
facilities furnished by the district or city, incorporated town
or other municipal corporation, as the case may be.

Any district furnishing sewer facilities within the district
may require all owners, tenants or occupants of any houses,
dwellings and buildings located near any such sewer
facilities, where sewage will flow by gravity or be transported by such other methods approved by the department of health from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the department of health and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state.

If the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwelling plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the department of health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the department of health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for
either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. When such fees, rates and charges have been delinquent for thirty days, the district may forthwith foreclose the lien on the premises served in the same manner now provided in the laws of the state of West Virginia for the foreclosure of mortgages on real property.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section two, article five-a, chapter twenty, now or hereafter operating its own sewage disposal system, pursuant to a permit issued by the department of natural resources, as prescribed by section seven, article five-a, chapter twenty of this code, is exempt from the provisions of this section.


The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board.

§16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall install and maintain a proper system of accounts showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited by an independent public accountant. A copy of the audit shall be forwarded within thirty days of
completion to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both.

§16-13A-12. Disbursement of district funds.

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board.

§16-13A-18a. Sale, lease or rental of water system by district; distribution of proceeds.

In any case where a public service district owns a water system, and all the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water system to any municipality or privately owned water system, or to any water system owned by an adjacent public service district, the board may so sell, lease or rent such water system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon approval by the public service commission of West Virginia.
In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district shall be ratably distributed to any persons who have made contributions in aid of construction of such water system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water system is located to be placed in the general funds of such county commission.


Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.


Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money or
issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article without the prior consent and approval of the public service commission. Notwithstanding any other provision of this code, when a public service district is seeking to borrow money for the acquisition or construction of public service properties, or contract to issue revenue bonds to commence the construction or acquisition of public service properties, the public service district shall publish a Class II legal advertisement in a newspaper of general circulation within the district, which legal advertisement shall state:

(1) The amount of money to be borrowed, or the amount of revenue bonds to be issued;

(2) The interest rate and terms of the loan or bonds;

(3) The public service properties to be acquired or constructed, and the cost of same;

(4) The anticipated rates which will be charged by the district; and

(5) The fact that a form is available in the county clerk’s office and at the office of the public service district for residents of that portion of the public service district which will be served by the public service property to be acquired or constructed to sign indicating their opposition to the public service district borrowing money or issuing revenue bonds. In addition, the public service district shall cause to be posted in conspicuous places throughout that portion of the public service district which will be served by the public service property to be acquired or constructed signs measuring not less than eight and one-half inches in width and eleven inches in length which include the same information as required in the Class II legal advertisement.

For a period of thirty days beginning with the first publication of the legal advertisement, the county clerk shall maintain within the courthouse of the county containing the public service district and the public service district shall maintain at its office a form provided by the public service district to be signed by any registered voter who is a resident of that portion of the public service district which will be
served by the public service property to be acquired or
constructed, and who is opposed to the public service district
borrowing money or issuing revenue bonds upon the terms or
for the purpose stated in the legal advertisement. The form
available in the county clerk's office and in the office of the
public service district shall state:

(1) The amount of money to be borrowed, or the amount of
revenue bonds to be issued;

(2) The interest rate and terms of the loan or bonds;

(3) The public service properties to be acquired or
constructed, and the cost of same; and

(4) The anticipated rates which will be charged by the
district. The form shall be arranged in a manner that permits
every registered voter who is opposed to sign his name and
list his address. The commission shall not grant its consent
and approval if more than fifty percent of the registered
voters who are residents of that portion of the public service
district which will be served by the public service property to
be acquired or constructed sign the form indicating their
opposition. The commission may grant its consent and
approval subject to such terms and conditions as may be
necessary for the protection of the public interest, pursuant to
the provisions of chapter twenty-four of this code, or may
withhold such consent and approval for the protection of the
public interest.

In the event of disapproval, the reasons therefor shall be
assigned in writing by the commission. If written disapproval
has not been given by the commission within sixty days after
receipt of the application by the commission, it may be
deemed by the applicant that approval has in fact been given.

CHAPTER 125
(S. B. 186—By Mr. Palumbo)

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

AN ACT to amend and reenact section twenty, article fifteen,
chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to public health; state housing law; bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity; increasing maximum allowable interest rates on housing authority bonds from seven percent to twelve percent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. STATE HOUSING LAW.

§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding twelve percent per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds shall be sold at not less than par at public sale held after notice 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 city or county, as the case may be. The notice shall be published at least five days prior to such sale. The notice shall also be published in a financial newspaper published in the city.
of New York, New York: Provided, however, That such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the bonds authorized in connection with any project or projects are sold to the federal government, the balance of such bonds may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this article.

CHAPTER 126

(5. B. 475—By Mrs. Spears and Mr. Wise)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to
the establishment and maintenance of a state program for the care, treatment and assistance of all persons in the state suffering from hemophilia; defining hemophilia; stating the purpose and goal of said program; prescribing certain general program requirements and basic principles; relating to program coverage, minimum standards and guidelines; providing for a certain advisory committee on hemophilia, its function and meetings and reimbursement of members; providing for enrollment in said program and requiring a certain consent therefor; providing for when certain payments to hemophiliacs may be made; and giving the state director of health broad general powers, duties and responsibilities with respect to all the foregoing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. STATE HEMOPHILIA PROGRAM.

§16-24-1. Definition.

§16-24-2. State hemophilia program established.

§16-24-3. Purpose of article; goal of program.

§16-24-4. General program requirements and basic principles.

§16-24-5. General powers, duties and responsibilities of director; program coverage.

§16-24-6. Advisory committee on hemophilia.

§16-24-7. Enrollment in program; consent of private physician required.

§16-24-8. When payments for care and treatment of hemophiliacs may be made by director.

§16-24-1. Definition.

1 As used in this article, "hemophilia" means a person's
2 bleeding tendency resulting from a genetically determined
3 deficiency of a clotting factor in the blood.

§16-24-2. State hemophilia program established.

1 The state director of health shall establish and maintain a
2 state hemophilia program for the care, treatment and other
3 assistance of all persons in this state suffering from
4 hemophilia. Such program shall assist such persons who
5 require continuing treatment of blood and blood derivatives
6 to avoid crippling, extensive hospitalization and other effects
7 associated with such condition and shall provide medical
care and assistance for hemophiliacs who are unable to pay for their medical expenses despite the existence of various types of private and public insurance programs, government assistance programs or private charitable assistance programs. The director shall establish and maintain standards to determine the eligibility of persons for care, treatment and assistance under the program and for the supervision of all such care, treatment and assistance provided.

§16-24-3. Purpose of article; goal of program.

The purpose of this article and the goal of the program established by this article is to increase the availability, accessibility, efficiency and quality of health delivery services for hemophiliacs in West Virginia and to normalize their life-style to the fullest extent possible.

§16-24-4. General program requirements and basic principles.

The director shall organize and maintain the program established by this article according to the following requirements:

(1) The objectives of the program must be realistic and obtainable and must promote increased quality of life for as many hemophiliacs in this state as funds permit.

(2) Priority must be given to activities designed to prevent crippling, reduce the need for hospitalization and normalize to the maximum extent practicable the life-style of as many hemophiliacs as possible.

(3) The program must make provision for review by the director of the quality of treatment being given. Review must allow consideration of new medical knowledge, changes in federal and state legislation, rules and regulations and possible alternative sources of funding to ensure full representation and protection of the hemophiliacs.

(4) Cooperative linkages among providers of services must be sought and developed. Health care programs must be publicized and promoted.

(5) Patients and their families must have the freedom of choice in the type of treatment and the place of delivery.
§16-24-5. General powers, duties and responsibilities of director; program coverage.

1 In carrying out the program established by this article, the director has the power, duty and responsibility to:

3 (1) Establish and maintain a roster of persons with hemophilia;

5 (2) Establish and maintain minimum standards for determining eligibility for care and treatment under the program, which must require that any resident hemophiliac may register and participate in the program even if he chooses to pay the entire cost of blood and blood products himself;

11 (3) Identify hemophilia centers in this state that are interested in creating or expanding a home care program. Such centers must provide comprehensive services for periodic, at least annual, review of registered hemophiliacs;

15 (4) Provide blood products for home care programs, monitor their usefulness and determine costs of available blood products and secure such products at the least possible cost to each patient;

19 (5) Develop a registry of resources for hemophiliacs in West Virginia and disseminate information thereupon to patients and the public through educational programs; and

22 (6) Do all other things, not inconsistent with the provisions of this article, reasonable and necessary or convenient to carry out the purpose of this article and achieve the goal of the state hemophilia program.

§16-24-6. Advisory committee on hemophilia.

The director shall appoint an advisory committee on hemophilia composed of knowledgeable physicians, representatives of the state chapter of the national hemophilia foundation, if any such chapter is established, patients, parents of patients and representatives of provider agencies to advise the director as to the contents and concerns of the program established by this article and all other pertinent matters of mutual concern.

Such committee shall meet at such times and places as the
director considers necessary or convenient. Each member of
the committee shall be reimbursed for all reasonable and
necessary expenses actually incurred in carrying out his
duties pursuant to this section.

§16-24-7. Enrollment in program; consent of private physician
required.

Any person meeting the minimum standards for eligibility
prescribed by the director may register in the program
established by this article. A person may be enrolled in the
program only with the consent of his private physician.

§16-24-8. When payments for care and treatment of
hemophiliacs may be made by director.

All resources reasonably available to the hemophiliac such
as private insurance, medicaid payments, aid from other state
agency programs and private agency fundings must be used
for payment of medical care for the hemophiliac before any
funds provided pursuant to the state hemophilia program
established by this article are used. Approved participating
treatment centers may be reimbursed for services according
to rates established by the director for that portion of
approved care for the hemophiliac not covered by other
insurance or assistance programs. Where such insurance or
other assistance funds are available, approved treatment
centers shall be required by the director to submit grant
requests for such funds. Any center receiving any moneys
from the director under the program established by this
article must accept and comply with the director's standards
hereunder for home care and ongoing patient evaluation.

CHAPTER 127
(S. B. 300—By Mr. McGraw, Mr. President)

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

AN ACT to amend and reenact section twenty, article eighteen,
chapter thirty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
authorized limit on borrowing of the West Virginia housing
development fund; and increasing said limit from seven hundred million dollars to nine hundred million dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


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

2 Provided, 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 128

(Revised Com. Sub. for S. B. 388—By Mr. Jones, Mr. Palumbo and Mr. Holliday)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, eight, nine, thirteen and sixteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that all citizens be provided equal opportunities and rights in employment, public accommodations and housing accommodations regardless of handicap.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy
§5-11-2. Declaration of policy.

It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness or handicap.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness or handicap is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

(b) The term "commission" means the West Virginia human rights commission;

(c) The term "director" means the executive director of the commission;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: Provided, That such term shall
not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private;

(k) The term "housing accommodations" means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented;

(l) The term "real property" includes real estate, lands, leaseholds, commercial or industrial buildings and any
vacant land offered for sale or rent on which the construction
of a housing accommodation, commercial or industrial
building is intended, and any land operated as a trailer camp
or rented or leased for the use, parking or storage of mobile
homes or house trailers;

(m) The term “real estate broker” includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term “real estate broker” shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker;

(n) The term “real estate salesman” includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance
upon or transfer of real estate for others, or to collect rents for
the use of real estate, or to solicit for prospective purchasers
or lessees of real estate, or who is employed by a licensed real
estate broker to sell or offer to sell lots or other parcels of real
estate, at a stated salary, or upon a commission, or upon a
salary and commission, or otherwise to sell real estate, or any
parts thereof, in lots or other parcels;
(o) The term "purchaser" includes any occupant,
prospective occupant, lessee, prospective lessee, renter,
prospective renter, buyer or prospective buyer;
(p) The term "owner" shall include the owner, lessee,
sublessee, assignee, manager, agents, or other person, firm or
corporation having the right to sell, rent or lease any housing
accommodation or real property within the state of West
Virginia or any agent of any of these;
(q) The term "age" means ages forty through sixty-five,
both inclusive;
(r) The term "rooming house" means a house or building
where there are one or more bedrooms which the proprietor
can spare for the purpose of giving lodgings to such persons
as he chooses to receive;
(s) For the purpose of this article, a person shall be
considered to be blind only if his central visual acuity does
not exceed twenty/two hundred in the better eye with
correcting lenses, or if his visual acuity is greater than
twenty/two hundred but is occasioned by a limitation in the
fields of vision such that the widest diameter of the visual
field subtends an angle no greater than twenty degrees;
(t) The term "handicap" means any physical or mental
impairment which substantially limits one or more of an
individual's major life activities.
§5-11-4. Human rights commission continued; status, powers
and objects.
1 The West Virginia human rights commission, heretofore
created, is hereby continued. The commission shall have the
power and authority and shall perform the functions and
services as in this article prescribed and as otherwise
provided by law. The commission shall encourage and
endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness or handicap.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

3 (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

4 (c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness or handicap and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

5 (d) To hold and conduct public and private hearings at such times and places around the state as may be practical on complaints, matters and questions before the commission.
and, in connection therewith, relating to discrimination in employment, or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the concurrence of at least five members of the commission, administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to a panel of one commission member appointed by the chairman and a hearing examiner who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and actions growing out of or upon any such hearings shall be reserved for determination by the commission;

(4) To enter into conciliation agreements and consent orders;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;
(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;
(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or handicapped: Provided, That it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to (1) elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (2) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex or age; or (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire,
tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(1) Select individuals for an apprentice training program registered with the state of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(2) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification;

(e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(1) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the
accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age or who is blind or handicapped, is unwelcome, objectionable, not acceptable, undesired or not solicited;

(g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons: Provided, That this provision shall not require any person named herein to rent, lease, assign or sublease any housing accommodations or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property, or any portion thereof, are suitable for only one sex;

(2) To discriminate against any person or group of persons because of the race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons in the terms, conditions or privileges of the sale, rental or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the
prospective purchase, rental, lease, assignment or sublease of
any housing accommodations or real property or part or
portion thereof, which expresses, directly or indirectly, any
discrimination as to race, religion, color, national origin,
ancestry, sex, blindness or handicap or any intent to make
any such discrimination and the production of any statement,
advertisement, publicity, sign, form of application, record or
inquiry purporting to be made by any such person shall be
prima facie evidence in any action that the same was
authorized by such person: Provided, That with respect to
sex discrimination, this provision shall not apply to any
person named herein whose housing accommodations or real
property, or any portion thereof, have facilities which are
suitable for only one sex;

(h) For any person or financial institution or lender to
whom application is made for financial assistance for the
purchase, acquisition, construction, rehabilitation, repair or
maintenance of any housing accommodations or real
property, or part or portion thereof, or any agent or employee
thereof to:

(1) Discriminate against any person or group of persons
because of race, religion, color, national origin, ancestry, sex,
blindness or handicap of such person or group of persons or
of the prospective occupants or tenants of such housing
accommodation or real property, or part or portion thereof, in
the granting, withholding, extending, modifying or renewing,
or in the fixing of the rates, terms, conditions or provisions of
any such financial assistance or in the extension of services in
connection therewith;

(2) Use any form of application for such financial
assistance or to make any record of inquiry in connection
with applications for such financial assistance which
expresses, directly or indirectly, any discrimination as to
race, religion, color, national origin, ancestry, sex, blindness
or handicap or any intent to make any such discrimination;

(i) For any person, employer, employment agency, labor
organization, owner, real estate broker, real estate salesman
or financial institution to:

(1) Engage in any form of threats or reprisal, or to engage
in, or hire, or conspire with others to commit acts or activities
of any nature, the purpose of which is to harass, degrade, 
embarrass, or cause physical harm or economic loss or to aid, 
abet, incite, compel or coerce any person to engage in any of 
the unlawful discriminatory practices defined in this section; 

(2) Willfully obstruct or prevent any person from 
complying with the provisions of this article, or to resist, 
prevent, impede or interfere with the commission or any of its 
members or representatives in the performance of duty under 
this article; 

(3) Engage in any form of reprisal or otherwise 
discriminate against any person because he has opposed any 
practices or acts forbidden under this article or because he 
has filed a complaint, testified or assisted in any proceeding 
under this article; 

(4) Induce or attempt to induce for profit any person to sell 
or rent or to not sell or rent any housing accommodations or 
real property by representations regarding the entry or 
prospective entry into the neighborhood of a person or 
persons who are blind or handicapped or who are of a 
particular race, religion, color, national origin, ancestry or 
sex: Provided, That for the purposes of this article it shall not 
be an unlawful discriminatory practice for any person, 
employer or owner to refuse to make any unreasonable 
capital expenditure to accommodate the physical or mental 
impairment of any handicapped person. 


Nothing contained in this article shall be deemed to repeal 
or supersede any of the provisions of any existing or hereafter 
adopted municipal ordinance, municipal charter or of any law 
of this state relating to discrimination because of race, 
religion, color, national origin, ancestry, sex, age, blindness or 
handicap, but as to acts declared unlawful by section nine of 
this article the procedure herein provided shall, when 
invoked, be exclusive and the final determination therein 
shall exclude any other action, civil or criminal, based on the 
same grievance of the complainant concerned. If such 
complainant institutes any action based on such grievance 
without resorting to the procedure provided in this article, he 
may not subsequently resort to the procedure herein. In the 
event of a conflict between the interpretation of a provision of
this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.


Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the department of employment security to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: Provided, That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

CHAPTER 129

(Com. Sub. for H. B. 990—By Mr. Tompkins and Mr. Martin, 35th Dist.)

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

AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred nine, article three, chapter forty-six-a of said code, relating to kinds of insurance; providing a definition of loss of income insurance; relating to additional charges and insurance with respect to consumer loans and consumer sales; and providing certain restrictions on the right of creditors to provide loss of income insurance.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article
1. Definitions.

ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:

5 (a) Life insurance—Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

9 (b) Accident and sickness— Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness, and insurance relating thereto.

14 (c) Fire—Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (e) (11) of this section.

21 (d) Marine—Marine insurance is insurance:

22 (1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of
property and interests therein, in respect to, appertaining to
or in connection with any and all risks or perils of naviga-
tion, transit or transportation, including war risks, on or
under any seas or other waters, on land (above or below
ground), or in the air, or while being assembled, packed,
crated, baled, compressed or similarly prepared for shipment
or while awaiting the same or during any delays, storage,
transshipment or reshipment incident thereto, including ma-
rine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person
or to property in connection with or appertaining to a marine,
inland marine, transit or transportation insurance, including
liability for loss of or damage to either, arising out of or in
connection with the construction, repair, operation, main-
tenance or use of the subject matter of such insurance (but
not including life insurance or surety bonds nor insurance
against loss by reason of bodily injury to the person arising
out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious
stones, jewels, jewelry, gold, silver and other precious metals,
whether used in business or trade or otherwise and whether
the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges,
tunnels and other instrumentalities of transportation and com-
munication (excluding buildings, their furniture and furnish-
ings, fixed contents and supplies held in storage) unless fire,
windstorm, sprinkler leakage, hail, explosion, earthquake,
riot or civil commotion or any or all of them are the only
hazards to be covered;

(5) Against any and all kinds of loss or damage to piers,
wharves, docks and ships, excluding the risks of fire, wind-
storm, sprinkler leakage, hail, explosion, earthquake, riot and
civil commotion and each of them;

(6) Against any and all kinds of loss or damage to other
aids to navigation and transportation, including dry docks and
marine railways, dams and appurtenant facilities for control
of waterways;
(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(e) Casualty—Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft or draft or riding animal.

(2) Liability insurance, which is insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provision for medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

(3) Burglary and theft insurance, which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverages for medical, hospital, surgical and funeral benefits sustained by the named insured or other person as a result of bodily injury during the commission of a burglary, robbery or
theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause.

(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause.

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation and fittings.

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured.

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus.

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means unemployment which has occurred as a result of, but not limited to, individual or mass layoffs, general strikes or lockouts.

(9) Malpractice insurance, which is insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of
the death, injury or disablement of any person, or arising
out of damage to the economic interest of any person, as
the result of negligence in rendering expert, fiduciary or
professional service.

(10) Entertainment insurance, which is insurance indemnify-
ing the producer of any motion picture, television, radio,
theatrical, sport, spectacle, entertainment or similar produc-
tion, event or exhibition against loss from interruption, post-
ponement or cancellation thereof due to death, accidental
injury or sickness of performers, participants, directors or
other principals.

(11) Miscellaneous insurance, which is insurance against
any other kind of loss, damage or liability properly a subject
of insurance and not within any other kind of insurance as
defined in this chapter, if such insurance is not disapproved
by the commissioner as being contrary to law or public policy.

(f) Surety—Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing
the fidelity of persons holding positions of public or private
trust.

(2) Insurance guaranteeing the performance of contracts,
other than insurance policies, and guaranteeing and executing
bonds, undertakings and contracts of suretyship.

(3) Insurance indemnifying banks, bankers, brokers, finan-
cial or moneyed corporations or associations against loss,
resulting from any cause, of bills of exchange, notes, bonds,
securities, evidences of debt, deeds, mortgages, warehouse
receipts or other valuable papers, documents, money, precious
metals and articles made therefrom, jewelry, watches, neck-
laces, bracelets, gems, precious and semiprecious stones,
including any loss while they are being transported in armored
motor vehicles or by messenger, but not including any other
risks of transportation or navigation, and also insurance
against loss or damage to such an insured's premises or to his
furnishings, fixtures, equipment, safes and vaults therein,
caused by burglary, robbery, theft, vandalism or malicious
mischief, or any attempt to commit such crimes.
(4) Title insurance, which is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity or adverse claim to title.

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; insurance.

1 (1) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

5 (a) Official fees and taxes;

6 (b) Charges for insurance as described in subsection (2):
Provided, That nothing contained in this section with respect to insurance shall be construed as in any way limiting the power and jurisdiction of the insurance commissioner of this state in the premises;

(c) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(d) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner:
Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder must be issued by an individual licensed under the laws of this state to sell such insurance and the determination of whether the charges there-
(e) Reasonable closing costs with respect to a debt secured by an interest in land.

(2) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection, and vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. Only one policy of life insurance and/or one policy of health and accident insurance and/or one policy of accident insurance and/or one policy of loss of income insurance on any one consumer may be in force with respect to any one contract or agreement at any one time, but one policy may cover both a consumer and his spouse:

(a) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of such insurance shall be reasonable in relation to the terms of credit: Provided, That nothing shall be deemed to prohibit the consumer from obtaining, at his option, greater coverages for longer periods of time if he so desires;

(b) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for such insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then such excess shall be payable to the estate of the consumer. The initial term of such life insurance in connection with a consumer credit sale, other than a sale
pursuant to a revolving charge account, or in connection with a
consumer loan, other than a loan pursuant to a revolving loan
account, shall not exceed the scheduled term of the consumer
credit agreement by more than fifteen days. The aggregate
amount of periodic benefits payable by credit accident and
health insurance in the event of disability, as defined in the
policy, and loss of income insurance in the event of involun-
tary loss of employment, as defined in the policy, shall not
exceed the unpaid amount of such indebtedness; periodic bene-
fits payable in connection with a consumer credit sale pursuant
to a revolving charge account or of a consumer loan pursuant
to a revolving loan account may be based upon the authorized
credit limit;

(c) When the insurance is obtained or provided by or
through a creditor, the creditor may collect from the consumer
or include as a part of the cash price of a consumer credit
sale or as part of the principal of a consumer loan, or deduct
from the proceeds of any consumer loan the premium, or in the
case of group insurance, the identifiable charge. The premium
or identifiable charge for such insurance required or obtained
by a creditor may equal, but shall not exceed the premium rate
filed by the insurer with the insurance commissioner. In any
case, when the creditor collects the entire premium for such
insurance in advance, such premium shall be remitted by such
creditor to the insurer or the insurance agent, as specified by
the insurer, within ten days from or after the end of the month
in which such collection was made;

(d) With respect to insurance against loss of or damage
to property, or against liability, the creditor shall furnish a
clear and specific statement in writing to the debtor, setting
forth the cost of the insurance if obtained from or though the
creditor, and stating that the debtor may choose the person
through whom the insurance is to be obtained; and

(e) With respect to consumer credit insurance providing
life, accident, health or loss of income coverage, no creditor
shall require a consumer to purchase such insurance or to pur-
chase such insurance from such creditor or any particular
agent, broker or insurance company as a condition precedent
to extending credit to or on behalf of such consumer.
AN ACT to amend and reenact section seven, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to group life insurance; and increasing the amount of dependent coverage permitted under group life insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-7. Dependent coverage.

1 Any policy issued pursuant to sections two, four and five of this article may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

6 (a) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least seventy-five percent of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.
(b) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer or union, and shall not exceed, with respect to any spouse or child, the amount shown in the following schedule:

<table>
<thead>
<tr>
<th>Age of Family member at Death</th>
<th>Maximum Amount of Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 6 months</td>
<td>$500.00</td>
</tr>
<tr>
<td>6 months to 18 years</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Spouse</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

(c) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, subject to the requirements of paragraphs (a), (b) and (c), section sixteen of this article. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under section seventeen of this article, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(d) Notwithstanding section fifteen of this article, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.
CHAPTER 131
(Com. Sub. for S. B. 269—By Mr. Nelson and Mr. Harman)

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

AN ACT to amend article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections three-c and three-d; to amend and reenact section four, article twenty-four of said chapter thirty-three; and to amend article twenty-eight of said chapter thirty-three by adding thereto a new section, designated section five-b, all relating to provisions required in policies of group accident and sickness; coverage for alcoholic treatment; medical supplement insurance; hospital, medical and dental service corporations; minimum policy standards.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections three-c and three-d; that section four, article twenty-four of said chapter thirty-three be amended and reenacted; and that article twenty-eight of said chapter thirty-three be amended by adding thereto a new section, designated section five-b, all to read as follows:

Article
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations and Dental Service Corporations.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.


1. No group, blanket, franchise or association accident and sickness insurance policy providing coverage on an expense incurred basis, nor group, blanket, franchise or association service or indemnity type contract issued by a service corporation pursuant to the provisions of section one, article
twenty-four, chapter thirty-three of this code shall be issued, delivered, executed or renewed in this state unless such policy or contract, at the option of the policyholder or sponsor, provides the level of benefits specified herein to any insured, subscriber or other person covered under the policy or contract for expenses incurred in connection with the treatment of alcoholism, when such treatment is prescribed by a duly licensed physician, subject to the right of the policyholder or sponsor to select any alternative level of benefits as may be offered by the insurer or service corporation. For purposes of this section, alcoholism is hereby defined as a chronic disorder or illness in which the individual is unable, for psychological or physical reasons, or both, to refrain from the frequent consumption of alcohol in quantities sufficient to produce intoxication and, ultimately, injury to health and effective functioning. Benefits provided under this section shall include a minimum of thirty days of inpatient confinement as defined in the policy of contract. If inpatient hospital benefits are provided beyond thirty days of confinement, the durational limits, dollar limits, deductibles and co-insurance factors applicable thereto need not be the same as applicable to physical illness generally. As to outpatient benefits, the co-insurance factor may not exceed fifty percent or the co-insurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for alcoholism in the aggregate during any applicable benefit period may be limited to not less than seven hundred fifty dollars. Maximum lifetime benefits may, as to alcoholism in the aggregate, be no less than an amount equal to the lesser of ten thousand dollars or twenty-five percent of the lifetime policy limit. "Inpatient hospital benefits" means only those payable for charges made by a hospital, as defined in the policy or contract, for the necessary care and treatment of alcoholism furnished to a covered person while confined as a hospital inpatient; and with respect to major medical policies or contracts, also those payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of alcoholism furnished to a covered person while confined as a hospital inpatient. "Outpatient benefits" means only those payable for (1) charges made by a hospital for the necessary care and treatment of alcoholism furnished to a covered person while
not confined as a hospital inpatient, (2) charges for services rendered or prescribed by a physician for the necessary care and treatment for alcoholism furnished to a covered person while not confined as a hospital inpatient, and, (3) charges made by an alcoholism treatment center, as defined herein, for the necessary care and treatment of a covered person provided in such treatment center. "Alcoholism Treatment Center" means a treatment facility which provides a program for the treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician, and which facility is also: (1) affiliated with a hospital under a contractual agreement with an established system for patient referral, or (2) licensed, certified or approved as an alcoholism treatment center by the state. This section shall not apply to blanket, short-term travel, accident only, limited or specified disease, individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plan.

§33-16-3d. Medicare supplement insurance.

1 (a) Definitions.

2 (1) “Applicant” means, in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

3 (2) “Certificate” means, for the purposes of this section, any certificate issued under a group medicare supplement policy, which policy has been delivered or issued for delivery in this state.

4 (3) “Medicare supplement policy” means a group policy of accident and sickness insurance or a subscriber contract (of hospital and medical service associations) which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare by reason of age. Such term does not include:

5 (A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination
thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations, or

(B) A policy or contract of any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade or occupation; has been maintained in good faith for purposes other than obtaining insurance; and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

(C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

(4) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(b) **Standards for policy provisions.**

(1) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with the applicable laws of this state and may cover, but shall not be limited to:

(A) Terms of renewability;
(B) Initial and subsequent conditions of eligibility;
(C) Nonduplication of coverage;
(D) Probationary period;
(E) Benefit limitations, exceptions and reductions;
(F) Elimination period;
(G) Requirements for replacement;
(H) Recurrent conditions; and
(I) Definitions of terms.

(2) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to
any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) Minimum standards for benefits.

The commissioner shall issue reasonable regulations to establish minimum standards for benefits under medicare supplement policies.

(d) Loss ratio standards.

Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charge. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios and medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are recomputed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of regulations issued pursuant to this paragraph, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(e) Disclosure standards.

(1) In order to provide for full and fair disclosure in the sale of accident and sickness policies, to persons eligible for medicare by reason of age, the commissioner may require by regulation that no policy of accident and sickness insurance may be issued for delivery in this state and no certificate may be delivered pursuant to such a policy unless an outline of coverage is delivered to the applicant at the time application is made.

(2) The commissioner shall prescribe the format and
content of the outline of coverage required by paragraph one. For purposes of this paragraph, "format" means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the exceptions, reductions and limitations contained in the policy;

(C) A statement of the renewal provisions including any reservation by the insurer of the right to change premiums;

(D) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for medicare by reasons of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare by reason of age, but in no event later than the time of policy delivery.

(4) The commissioner may further promulgate reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare by reason of age.

(f) Notice of free examination.

Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the
policy or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within ten days from its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

(g) Administrative procedures. Regulations promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (West Virginia Administrative Procedures Act).

(h) Separability. If any provision of this section or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of other laws.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions, as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation), article eleven (unfair
practices and frauds), article twelve (agents, brokers and
solicitors) except that the agent's license fee shall be one
dollar, section three-c, article sixteen (group accident and
sickness insurance), section three-d, article sixteen (medicare
supplement), and article twenty-eight (individual accident
and sickness insurance minimum standards); and no other
provision of this chapter shall apply to such corporations
unless specifically made applicable by the provisions of this
article. If, however, any such corporation shall be converted
into a corporation organized for a pecuniary profit, or if it
shall transact business without having obtained a license as
required by section five of this article, it shall thereupon
forfeit its right to these exemptions.

ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE
MINIMUM STANDARDS.

§33-28-5b. Medicare supplement insurance.

(a) Definitions.

(1) "Applicant" means, in the case of an individual
medicare supplement policy or subscriber contract, the
person who seeks to contract for insurance benefits.

(2) "Medicare supplement policy" means an individual
policy of accident and sickness insurance or a subscriber
contract (of hospital and medical service associations) which
is advertised, marketed or designed primarily as a
supplement to reimbursements under medicare for the
hospital, medical or surgical expenses of persons eligible for
medicare by reason of age. Such term does not include:

(A) A policy or contract of one or more employers or labor
organizations, or of the trustees of a fund established by one
or more employers or labor organizations, or a combination
thereof, for employees or former employees, or combination
thereof, or for members or former members, or combination
thereof, of the labor organizations, or

(B) A policy or contract of any professional, trade or
occupational association for its members or former or retired
members, or combination thereof, if such association is
composed of individuals all of whom are actively engaged in
the same profession, trade or occupation; has been
maintained in good faith for purposes other than obtaining
insurance; and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members.

(C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

(3) “Medicare” means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(b) *Standards for policy provisions.*

(1) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with the applicable laws of this state and may cover, but shall not be limited to:

(A) Terms of renewability;
(B) Initial and subsequent conditions of eligibility;
(C) Nonduplication of coverage;
(D) Probationary period;
(E) Benefit limitations, exceptions and reductions;
(F) Elimination period;
(G) Requirements for replacement;
(H) Recurrent conditions; and
(I) Definitions of terms.

(2) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(3) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
(c) **Minimum standards for benefits.**

The commissioner shall issue reasonable regulations to establish minimum standards for benefits under medicare supplement policies.

(d) **Loss ratio standards.**

Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charge. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios and medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of regulations issued pursuant to this paragraph, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(e) **Disclosure standards.**

(1) In order to provide for full and fair disclosure in the sale of accident and sickness policies, to persons eligible for medicare by reason of age, the commissioner may require by regulation that no policy of accident and sickness insurance may be issued for delivery in this state and no certificate may be delivered pursuant to such a policy unless an outline of coverage is delivered to the applicant at the time application is made.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by paragraph one. For purposes of this paragraph, "format" means style, arrangements and overall appearance, including such items as size, color and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the exceptions, reductions and limitations contained in the policy;
(C) A statement of the renewal provisions including any
reservation by the insurer of the right to change premiums;

(D) A statement that the outline of coverage is a summary
of the policy issued or applied for and that the policy should
be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by regulation a
standard form and the contents of an informational brochure
for persons eligible for medicare by reasons of age, which is
intended to improve the buyer's ability to select the most
appropriate coverage and improve the buyer's understanding
of medicare. Except in the case of direct response insurance
policies, the commissioner may require by regulation that the
information brochure be provided to any prospective
insureds eligible for medicare concurrently with delivery of
the outline of coverage. With respect to direct response
insurance policies, the commissioner may require by
regulation that the prescribed brochure be provided upon
request to any prospective insureds eligible for medicare by
reason of age, but in no event later than the time of policy
delivery.

(4) The commissioner may further promulgate reasonable
regulations to govern the full and fair disclosure of the
information in connection with the replacement of accident
and sickness policies, subscriber contracts or certificates by
persons eligible for medicare by reason of age.

(f) Notice of free examination.

Medicare supplement policies or certificates, other than
those issued pursuant to direct response solicitation, shall
have a notice prominently printed on the first page of the
policy or attached thereto stating in substance that the
applicant shall have the right to return the policy of certificate
within ten days from its delivery and have the premium
refunded if, after examination of the policy or certificate, the
applicant is not satisfied for any reason. Medicare
supplement policies or certificates issued pursuant to a direct
response solicitation to persons eligible for medicare by
reason of age shall have a notice prominently printed on the
first page or attached thereto stating in substance that the
applicant shall have the right to return the policy or
certificate within thirty days of its delivery and to have the
premium refunded if, after examination, the applicant is not
satisfied for any reason.

(g) Administrative procedures.

Regulations promulgated pursuant to this section shall be
subject to the provisions of chapter twenty-nine-a (West
Virginia Administrative Procedures Act).

(h) Separability.

If any provision of this section or the application thereof to
any person or circumstance is for any reason held to be
invalid, the remainder of the section and the application of
such provision to other persons or circumstances shall not be
affected thereby.

CHAPTER 132
(Com. Sub. for S. B. 196—By Mrs. Spears)

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

AN ACT to amend and reenact section one, article eighteen,
chapter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to casualty
insurance coverage provisions for volunteer fire departments;
permitting volunteer fire departments to associate in securing
casualty insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. CASUALTY INSURANCE.

§33-18-1. Association of volunteer fire departments to obtain
casualty insurance.

Any state volunteer fire department may join with other
volunteer fire departments in this state in order to obtain
casualty insurance coverage as defined in subdivision (e),
4 section ten, article one of this chapter and the state insurance
5 commissioner and his staff may assist any such volunteer fire
6 departments in negotiating for, securing and adopting a
7 policy or policies of insurance written by a carrier or carriers
8 chartered under the laws of any state and duly licensed to do
9 business in this state.

CHAPTER 133

(Com. Sub. for S. B. 448—By Mr. Tonkovich, Mr. Moreland, Mr. Wise,
Mr. Galperin and Mr. Heck)

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

AN ACT to amend and reenact section two, article twenty-
four, chapter thirty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
to composition of the board of directors of hospitals
and dental service corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS AND DENTAL SER-
VICE CORPORATIONS.


1 For the purpose of this article:

2 (a) "Corporation" shall mean either a hospital service
3 corporation, a medical service corporation or a dental
4 service corporation.

5 (b) "Hospital service corporation" shall mean a non-
6 profit, nonstock corporation, organized in accordance
7 with the provisions of article one, chapter thirty-one of
8 this code, for the sole purpose of contracting with the
9 public and with hospitals and other health agencies for
hospital or other health services to be furnished to sub-
scribers under terms of their contract with the corpora-
tion, and controlled by a board of directors, not more
than twenty percent of whom, or whose spouse, parent,
child, brother or sister by blood or marriage, are engaged
in the providing of health care and at least eighty per-
cent of whom shall be chosen as representatives of the
interests of consumers, elderly persons, organized labor
and business subscribers.

(c) "Hospital service" shall mean only such hospital or
other health care, to be provided by hospitals or other
health agencies, or such payment therefor, as may be
specified in the contract made by the subscriber with the
corporation.

(d) "Medical service corporation" shall mean a non-
profit, nonstock corporation, organized in accordance with
the provisions of article one, chapter thirty-one of
this code, for the sole purpose of contracting with the
public and with duly licensed physicians, duly licensed
dentists and duly licensed podiatrists for medical or
surgical services and with duly licensed chiropractors
and other health agencies for other health services to be
furnished to subscribers under terms of their contract
with the corporation, and controlled by a board of
directors, not more than twenty percent of whom, or
whose spouse, parent, child, brother or sister by blood or
marriage, are engaged in the providing of health care
and at least eighty percent of whom shall be chosen as
representatives of the interests of consumers, elderly
persons, organized labor and business subscribers.

(e) "Medical service" shall mean only such medical,
surgical, or other health care, to be provided by duly
licensed physicians, duly licensed dentists, duly licensed
podiatrists or other health agencies and only such health
care, to be provided by duly licensed chiropractors, or
such payment therefor, as may be specified in the contract
made by the subscriber with the corporation.

(f) "Dental service corporation" shall mean a non-
profit, nonstock corporation, organized in accordance with
the provisions of article one, chapter thirty-one of this
code, for the sole purpose of contracting with the public
and with duly licensed dentists for dental services to be
furnished to subscribers under terms of their contracts
with the corporations, and controlled by a board of di-
rectors, not more than twenty percent of whom or whose
spouse, parent, child, brother or sister by blood or mar-
riage, are engaged in the providing of health care and
at least eighty percent of whom shall be chosen as rep-
resentatives of the interests of consumers, elderly persons,
organized labor and business subscribers.

(g) "Dental service" shall mean only such dental care,
to be provided by duly licensed dentists, duly licensed
physicians, or such payment therefor, as may be specified
in the contract made by the subscriber with the corpora-
tion.

(h) "Service" shall mean such hospital, medical, dental
or other health service as shall be provided under the
terms of the contracts issued by the corporation to sub-
scribers.

(i) "Commissioner" shall mean the insurance commis-
sioner of West Virginia.

CHAPTER 134

(Com. Sub. for S. B. 361—By Mr. Nelson and Mr. Susman)

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

AN ACT to amend chapter thirty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty-nine; and to
amend article six, chapter forty-six-a of said code, by adding
thereto a new section, designated section one hundred nine, all
relating to guidelines for the use of simplified language in life
and accident and sickness insurance policies; construction;
approval of forms; authority of insurance commissioner with
respect thereto; the use of plain language in consumer
transactions; and providing for actions for reforming consumer transaction agreements and awarding of costs including reasonable attorney fees in such actions.

Be it enacted by the Legislature of West Virginia:

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

Chapter
33. Insurance.
46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 33. INSURANCE.

ARTICLE 29. LIFE AND ACCIDENT AND SICKNESS INSURANCE POLICY LANGUAGE SIMPLIFICATION ACT.

§33-29-1. Title.

§33-29-2. Purpose.

§33-29-3. Definitions.

§33-29-4. Applicability and scope.

§33-29-5. Minimum policy language simplification standards.

§33-29-6. Construction.

§33-29-7. Powers of the commissioner.

§33-29-8. Approval of forms.


§33-29-1. Title.

1 This article may be cited as the Life and Accident and Sickness Insurance Policy Language Simplification Act.

§33-29-2. Purpose.

1 The purpose of this article is to establish minimum standards for language used in policies, contracts and certificates of life insurance, accident and sickness insurance, credit life insurance and credit accident and sickness insurance delivered or issued for delivery in this state to facilitate ease of reading by insureds.
This article is not intended to increase the risk assumed by insurance companies or other entities subject to this article or to supersede their obligation to comply with the substance of other insurance legislation applicable to life, accident and sickness, credit life or credit accident and sickness insurance policies. This article is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

§33-29-3. Definitions.

(a) "Policy" or "policy form" means any policy, contract, plan or agreement of life or accident and sickness insurance, including credit life insurance and credit accident and sickness insurance, delivered or issued for delivery in this state by any company subject to this article; any certificate, contract or policy issued by a fraternal benefit society; and any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state.

(b) "Company" or "insurer" means any life or accident and sickness insurance company, fraternal benefit society, nonprofit health service corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar type organizations.

§33-29-4. Applicability and scope.

(a) This article shall apply to all policies delivered or issued for delivery in this state by any company on or after the date such forms must be approved under this article, but nothing in this article shall apply to:

(1) Any policy which is a security subject to federal jurisdiction;

(2) Any group policy covering a group of one thousand or more lives at date of issue, other than a group credit life insurance policy or a group credit accident and sickness insurance policy; however, this shall not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this state;

(3) Any group annuity contract which serves as a funding
vehicle for pension, profit sharing, or deferred compensation plans;

(4) Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this article; or

(5) The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under this article.

(b) No other statute of this state setting language simplification standards shall apply to any policy forms.

§33-29-5. Minimum policy language simplification standards.

(a) In addition to any other requirements of law, no policy forms, except as stated in section four of this article, shall be delivered or issued for delivery in this state on or after the dates such forms must be approved under this article unless:

(1) The text achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (c) of this section;

(2) It is printed, except for specification pages, schedules and tables, in not less than ten point type, one point leaded;

(3) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(4) It contains a table of contents or an index of the principal sections of the policy, if the policy has more than three thousand words printed on three or fewer pages of text, or if the policy has more than three pages regardless of the number of words.

(b) For the purposes of this section, a Flesch reading ease test score shall be measured by the following method:

(1) For policy forms containing ten thousand words or less of text, the entire form shall be analyzed. For policy forms containing more than ten thousand words, the readability of two two-hundred word samples per page may be analyzed.
instead of the entire form. The samples shall be separated by
at least twenty printed lines;

(2) The number of words and sentences in the text shall be
counted and the total number of words divided by the total
number of sentences. The figure obtained shall be multiplied
by a factor of one and fifteen one-thousandths;

(3) The total number of syllables shall be counted and
divided by the total number of words. The figure obtained
shall be multiplied by a factor of eighty-four and six-tenths;

(4) The sum of the figures computed under subdivisions
(2) and (3), subsection (b) of this section, subtracted from two
hundred six and eight hundred thirty-five one-thousandths
equals the Flesch reading ease score for the policy form;

(5) For purposes of subdivisions (2), (3) and (4), subsection
(b) of this section, the following procedures shall be used:

(A) A contraction, hyphenated word, or numbers and
letters, when separated by spaces, shall be counted as one
word;

(B) A unit of words ending with a period, semicolon or
colon, but excluding headings and captions, shall be counted
as a sentence; and

(C) A syllable means a unit of spoken language consisting
of one or more letters of a word as defined by an accepted
dictionary. Where the dictionary shows two or more equally
acceptable pronunciations of a word, the pronunciation
containing fewer syllables may be used.

(6) The term “text” as used in this section shall include all
printed matter except the following:

(A) The name and address of the insurer; the name,
number or title of the policy; the table of contents or index;
captions and subcaptions; specification pages, schedules or
tables; and

(B) Any policy language which is drafted to conform to
the requirements of any federal law, regulation or agency
interpretation; any policy language required by any
collectively bargained agreement; any medical terminology;
any words which are defined in the policy; and any policy
language required by law or regulation: Provided, That the
insurer identifies the language or terminology excepted by this paragraph and certifies, in writing, that the language or terminology is entitled to be excepted by this paragraph.

(c) Any other reading test may be approved by the commissioner for use as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test.

(d) Filings subject to this section shall be accompanied by a certificate signed by an officer of the insurer stating that it meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved in accordance with section seven of this article. To confirm the accuracy of any certification, the commissioner may require the submission of further information to verify the certification in question.

(e) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

§33-29-6. Construction.

1 Nothing in this article shall be construed to negate any law of this state permitting the issuance of any policy form after it has been on file for the time period specified.

§33-29-7. Powers of the commissioner.

1 The commissioner may authorize a lower score than the Flesch reading ease score required in subdivision (1), subsection (a), section five of this article whenever, in his sole discretion, he finds that a lower score: (a) will provide a more accurate reflection of the readability of a policy form; (b) is warranted by the nature of a particular policy form or type or class of policy forms; or (c) is caused by certain policy language which is drafted to conform to the requirements of any state law, regulation or agency interpretation.

§33-29-8. Approval of forms.

1 A policy form meeting the requirements of subsection (a), section five of this article shall be approved notwithstanding the provisions of any other laws which specify the content of policies, if the policy form provides the policyholders and
5 claimants protection not less favorable than they would be
6 entitled to under such laws.

1 (a) Except as provided in section four, this article applies
2 to all policy forms filed on or after the first day of July, one
3 thousand nine hundred eighty-three. No policy form shall be
4 delivered or issued for delivery in this state on or after the
5 first day of July, one thousand nine hundred eighty-six,
6 unless approved by the commissioner or permitted to be
7 issued under this article. Any policy form which has been
8 approved or permitted to be issued prior to the first day of
9 July, one thousand nine hundred eighty-six, and which meets
10 the standards set by this article need not be refiled for
11 approval, but may continue to be lawfully delivered or issued
12 for delivery in this state upon the filing with the
13 commissioner of a list of such forms identified by form
14 number and accompanied by a certificate as to each such
15 form in the manner provided in subsection (d), section five of
16 this article.
17 (b) The commissioner, may, at his discretion and after
18 notice of hearing, extend the dates in subsection (a) of this
19 section.

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

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-109. The use of plain language in consumer transactions.
1 (a) Every written agreement entered into by a consumer
2 after the first day of April, one thousand nine hundred
3 eighty-two, for the purchase or lease of goods or services in
4 consumer transactions, whether for the rental of space to be
5 occupied for residential purposes or for the sale of goods or
6 services for personal, family, household or agricultural
7 purposes, must: (1) Be written in a clear and coherent
8 manner, using words with common and everyday meanings;
9 (2) use type of an easily readable size and ink which
10 adequately contrasts with the paper; and (3) be appropriately
11 organized and captioned by its various sections to be easily
12 understood.
(b) A violation of the provisions of this section shall not render any agreement void or voidable: Provided, That if a consumer at the time of entering into a consumer transaction or anytime thereafter, requests of the other party thereto that the agreement evidencing the consumer transaction be changed or written in a manner to conform with this section, and that request is refused, then a consumer shall have a cause of action to require a consumer agreement not in conformity with the provisions of this section to be reformed. This section shall not be construed to prohibit the use of words or phrases specifically required or specifically permitted by state or federal law, rule or regulation. This section shall not be construed to preclude a consumer from asserting a claim or defense which would have been available to the consumer if this provision were not in effect. A consumer may not waive the rights provided by this section, and any attempted waiver shall be void.

CHAPTER 135
(S. B. 574—By Mr. Harman and Mr. Nelson)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, section two, article two, section nine, article four, and sections two and ten, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to depositories for demand deposits, itemized record of moneys received for deposit, absence of auditor or treasurer, definitions in the “Investment Management Law” and restrictions on investments.

Be it enacted by the Legislature of West Virginia:

That section two, article one, section two, article two, section nine, article four, and sections two and ten, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended as follows:
Article
1. State Depositories.
2. Payment and Deposit of Taxes and Other Amounts Due the State or any Political Subdivision.
6. West Virginia State Board of Investments.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

1. The state board of investments shall designate the state and 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.

2. 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.

3. 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.

4. 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 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, 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, however, 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.
§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

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 within twenty-four hours 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.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-9. Absence of auditor or treasurer.

When it is necessary for either of the said officers to be absent, the other shall be informed thereof. During such absence, the duties of the officer so absent may be performed
by the chief clerk in his office. But if such absence be for
more than a day at any one time, the governor may appoint a
proper person to discharge the duties of such officer during
his absence. In either case, the absent officer and his sureties
shall be liable for any malconduct or neglect of the chief clerk
or person so acting in his place. Notwithstanding restrictions
which may otherwise be provided by law concerning
membership on any board, agency or commission, the
auditor and treasurer each may designate a representative
who is authorized to act for and on their behalf in any and all
matters relating to such memberships.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

§12-6-10. Restrictions on investments.

*§12-6-2. Definitions.

As used in this article, unless a different meaning clearly
appears from the context:

(1) “Board” means the West Virginia state board of
investments;

(2) “Consolidated fund” means the investment fund
managed by the board and established pursuant to
subsection (b), section eight of this article;

(3) “Consolidated pension fund” means the investment
fund managed by the board and established pursuant to
subsection (a), section eight of this article;

(4) “Local government account” means the account
within the consolidated fund established pursuant to
subsection (b), section eight of this article;

(5) “Local government funds” means the moneys of a
political subdivision transferred to the board for deposit in
the local government account;

(6) “Pension funds” means and includes the workmen’s
compensation fund; the state teachers retirement system
funds; the death, disability and retirement fund for members
of the department of public safety; the public employees
retirement system funds; the judges retirement fund; and

*Clerk's Note. This section was also amended by Com. Sub. for H. B. 1679, now
Chapter 167, which was passed on April 9, 1981.
such other retirement or pension funds and systems as may be hereafter established on behalf of public employees of the state or of its political subdivisions and administered by the state;

(7) "Political subdivision" means and includes a county, municipality, or any agency, authority, board, commission or instrumentality of a county or municipality, and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(8) "Securities" means all bonds, notes, debentures or other evidences of indebtedness, and shall not mean corporate stock;

(9) "State account" means the account within the consolidated fund established pursuant to subsection (b), section eight of this article; and

(10) "State funds" means all moneys of the state which may be lawfully invested except (a) the pension funds (as defined in subdivision (6) of this section) and (b) the "school fund" established by section four, article XII of the state constitution.

§12-6-10. Restrictions on investments.

Moneys on deposit in the consolidated fund and the consolidated pension fund shall be invested as permitted by section nine of this article subject to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the portfolio of either fund be invested in securities described in subdivision (g) of said section nine;

(2) At no time shall more than twenty percent of the portfolio of either fund be invested in securities described in said subdivision (g) which mature within one year from the date of issuance thereof;

(3) At no time shall more than three percent of the portfolio of either fund be invested in securities issued by a single private corporation or association.

For the purpose of making the computations required by this section, securities shall be valued in accordance with generally accepted accounting principles.
AN ACT to amend and reenact section twenty-four, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to payment of compensation to jurors; directing the clerk of any court upon which juries are in attendance to submit to the sheriff a copy of orders making allowances to jurors; directing the sheriff, upon receipt of such an order, to issue a check payable to the juror; providing for contempt proceedings against any sheriff who fails to pay such allowances; providing for reimbursement out of the state treasury for amounts paid by the sheriff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PETIT JURIES.

§52-1-24. Payment of compensation.

It shall be the duty of the clerk, as soon as practicable after the adjournment of the court, or before the adjournment of the court at such time as the court may direct, to deliver to the sheriff of such county certified copies of all orders under the preceding section making allowances to jurors payable out of the state treasury. The sheriff shall, upon receipt of such order or orders, issue a check payable to the juror for the amount allowed to him; and the sheriff shall deliver such check to the clerk, who shall deliver it to the juror. If any sheriff fail to pay any such allowance as required by law, he may be proceeded against as for a contempt of court.

Any allowance paid by the sheriff under the provisions of this section shall be repaid to the sheriff out of the state treasury, upon the production of satisfactory proof that the
same has actually been paid by him. Proof of payment shall be in the form of a complete itemized statement, indicating the total amount eligible for reimbursement.

CHAPTER 137

(H. B. 1183—By Mr. Burdette and Miss Shuman)

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

AN ACT to amend article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to continuing and reestablishing the department of labor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF LABOR.

§21-1-5. Reestablishment of department; findings.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the department of labor should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the department of labor shall continue to exist until the first day of July, one thousand nine hundred eighty-seven.
CHAPTER 138
(Com. Sub. for H. B. 720—By Mr. Karras and Mr. Farley)

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

AN ACT to amend article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; and to amend article five, chapter thirty of said code by adding thereto a new section, designated section sixteen-a, all relating to the manufacture, prescription and use of amygdalin (laetrile) under certain circumstances; requiring informed consent of the patient; allowing the parent or guardian of a minor child to consent to the use of amygdalin (laetrile); forwarding copy of the written informed request to state registrar of vital statistics; providing for the regulation, inspection and licensing of persons or facilities producing, manufacturing, delivering or selling amygdalin (laetrile); and providing for certain immunities for physicians, pharmacists, chemists and hospitals acting in compliance with this statute.

Be it enacted by the Legislature of West Virginia:

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

Chapter
30. Professions and Occupations.

CHAPTER 16. PUBLIC HEALTH.

Article
5A. Cancer Control.
5. Pharmacists, Assistant Pharmacists and Drugstores.

ARTICLE 5A. CANCER CONTROL.
§16-5A-9a. Laetrile use; informed consent.

1 A hospital or other health care facility may not interfere
with the physician-patient relationship by restricting or forbidding the intravenous use of amygdalin (laetrile) as certified in accordance with section sixteen-a, article five, chapter thirty of this code, as an adjunct to recognized, customary or accepted modes of therapy in the treatment of any malignancy for terminally ill cancer patients when it is prescribed or administered by a physician holding an unlimited license for the practice of medicine in the state of West Virginia and the patient has signed the "written informed request" therefor as set forth in this section: Provided, That a parent or guardian may sign the "written informed request" on a minor's behalf.

In the event that no recognized, customary or accepted mode of therapy is available for the treatment of any malignancy for a terminally ill cancer patient, the physician may prescribe or administer intravenous amygdalin (laetrile), as certified in accordance with section sixteen-a, article five, chapter thirty of this code, as the sole mode of therapy, providing further that said patient executed the "written informed request" as set forth in this section.

Any physician, hospital or other health care facility participating in any act permitted or required by this section is immune from any civil or criminal liability that otherwise might result by reason of such actions. A physician may not be subjected to disciplinary action by the state board of medicine of West Virginia for prescribing or administering intravenous amygdalin (laetrile), in compliance with the provisions of this section.

Nothing in this section shall be construed as constituting an endorsement of amygdalin (laetrile), as certified in accordance with section sixteen-a, article five, chapter thirty of this code, for the treatment of any malignancy, disease, illness or physical condition.

The "written informed request" referred to in this section shall be on a form prepared by and obtained from the state department of health and shall be in substance as follows:

"WRITTEN INFORMED REQUEST"
FOR PRESCRIPTION OF INTRAVENOUS AMYGDALIN (LAETRILE) FOR MEDICAL TREATMENT
Patient’s name: ____________________________

Address: ____________________________________

Age: ____________________________ Sex: ____________________________

Name and address of prescribing physician:

Nature of malignancy diagnosed for medical treatment by amygdalin (laetrile):

My physician has explained to me:

(a) That the manufacture and distribution of amygdalin (laetrile) has not been approved by the Federal Food and Drug Administration.

(b) That neither the American Cancer Society, the American Medical Association nor the West Virginia State Medical Association recommends use of amygdalin (laetrile) in the treatment of any malignancy, disease, illness or physical condition.

(c) That there are alternative recognized treatments for the malignancy, disease, illness or physical condition from which I suffer which he has offered to provide for me including:

(Here describe) (state “none” if applicable) ____________________________

(d) That I have the right to refuse or terminate the intravenous use of laetrile at any time.

I understand that physicians, hospitals or health care facilities are immune from civil and criminal liability for prescribing or administering amygdalin (laetrile) in compliance with state statutes.

That notwithstanding the foregoing, I hereby request prescription and use of intravenous amygdalin (laetrile) in the
medical treatment of the malignancy from which I suffer.

Patient or person signing for patient

Date of execution of request

ATTEST:

Prescribing physician

The prescribing physician shall forward a copy of the written informed request to the state registrar of vital statistics within ten days of the execution of such request and shall retain a copy of the request in the patient’s medical file.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-16a. Manufacture of laetrile.

The manufacture, distribution, delivery, possession, sale and use of amygdalin (laetrile) is lawful under specified conditions within the state of West Virginia unless the United States food and drug administration shall make a formal finding that the substance is harmful: Provided, That no person shall manufacture, distribute, sell or deliver amygdalin (laetrile) for the purpose of transporting such substance to any other state, district or territory beyond the borders of West Virginia.

The director of the state department of health and the state board of pharmacy shall regulate the manufacture, distribution and sale of amygdalin (laetrile) for use within the state to ensure that the substance is not adulterated in accordance with the provisions of article seven, chapter sixteen of this code: Provided, That amygdalin (laetrile) manufactured under the provisions of this section shall be certified as to composition and purity by the director of the state department of health or a qualified testing laboratory approved to make such certification by the director of the state department of health. The board of pharmacy shall have all necessary authority for the regulation, inspection and licensing of any
21 person or facility producing, manufacturing, delivering or
22 selling any amygdalin (laetrile) in this state in accordance with
23 the provisions of this article and shall promulgate and adopt
24 rules and regulations outlining minimum standards for manu-
25 facturers in preparing, packaging, processing and compounding
26 amygdalin (laetrile) and for the enforcement of such standards:
27 Provided, however, That application for a permit to manu-
28 facture amygdalin (laetrile) shall be accompanied by the per-
29 mit fee of five thousand dollars and by a bond of the applicant
30 in the surety sum of one million dollars with a corporate
31 surety authorized to transact business in the state of West
32 Virginia, which bond shall be conditioned on the payment of
33 all fees herein prescribed and on the faithful performance of
34 and compliance with the provisions of this section and of
35 the regulations issued hereunder by the board of pharmacy.
36
37 Any physician, pharmacist or chemist is immune from civil
38 or criminal liability and from disciplinary actions for activities
39 which comply with the provisions of this section or regulations
40 promulgated pursuant thereto.

CHAPTER 139

(H. B. 1598—By Mr. Speaker, Mr. See)

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

AN ACT to amend and reenact section one, article one, chapter four
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, correcting a code reference to the commission
on special investigations in a provision relating to interim
meetings and duties of legislative committees and commissions.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter four of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:
ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-1. Interim committee and subcommittee meetings.

(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 appropriation to the use and benefit of the house adopting the resolution.

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 func-
tion under the supervision of the joint committee on govern-
ment 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 subcom-
mittee 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 com-
mittee on government operations, the legislative commission
on pensions and retirement, the legislative rule-making re-
view committee, the commission on special investigations,
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. Mem-
bers of the Legislature performing interim duties as a mem-
ber of said committees or commissions, or subcommittees
thereof, under this subsection, shall receive interim com-
ensation as provided in section five, article two-a, chapter
four; travel expense reimbursement as provided in section
six, article two-a, chapter four; and interim expense reim-
bursement as provided in section eight, article two-a, chapter
four. However, to be eligible to receive the interim com-
ensation, travel expense reimbursement and interim expense
reimbursement, payment must be authorized by the joint com-
mittee on government and finance.

The joint committee on government and finance shall co-
ordinate meetings, of said committees and commissions, and
subcommittees thereof, between regular sessions of the Legis-
lature.
AN ACT to amend and reenact section one, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to attachment; filing of affidavit; and providing for a pre-judgment hearing to ascertain sufficient facts in an action for any claim arising out of a contract or for damages for any wrong prior to seizure of property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ATTACHMENT.

§38-7-1. Filing of affidavit; prejudgment hearing; seizure of property.

In any civil action for the recovery of any claim or debt arising out of contract, or to recover damages for any wrong, the plaintiff, after service of the summons upon the defendant, or at any time thereafter and before judgment may have an order of attachment against the property of the defendant, on filing with the clerk of the court in which such action, proceeding or suit is about to be or is brought, his own affidavit or that of some credible person, stating the nature of the plaintiff's claim and the amount, at the least, which the affiant believes the plaintiff is justly entitled to recover in the action, proceeding or suit, and also that the affiant believes that some one or more of the grounds mentioned in the next following section of this article exist for such attachment:

Provided, That in any action where the plaintiff shall give bond for the purpose of having the officer take possession of the personal property levied upon, as provided in section eight of this article, such officer may not take possession of the personal property attached under sec-
tion eight of this article unless and until a prejudgment hearing shall have been held, for which proper notice shall be given the defendant and which shall be held in not less than five days nor more than ten days after the filing of the affidavit; which hearing shall be held to ascertain specific facts as to the nature of the obligation under which the plaintiff claims a right to possession, and to establish facts justifying the seizure, under one or more of the grounds set forth in section two of this article.

CHAPTER 141
(S. B. 150—By Mr. Steptoe)

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

AN ACT to repeal section seventeen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, eight, fourteen, fifteen and sixteen of said article, all relating to revising the state law on miscellaneous liens and pledges to provide for due process of law with respect to personal property retained by lienors and pledgees; stating the rights of lienors for the retention of said property; relating to improver's, storer's and transporter's liens on personal property and animals and liens for lodging and board; relating to liens of humane officers and liens for certain services of male animals; providing a specific remedy and method for the enforcement of said miscellaneous liens and pledges; providing for notices and court proceedings; providing for the sale or disposition of perishable or hazardous goods; and allowing certain other remedies.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, five, six, eight, fourteen, fifteen and sixteen of said article be amended and reenacted, to read as follows:
ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

§38-11-3. Improver’s, storer’s or transporter’s lien on personal property and animals.

A person who, while in possession thereof, makes, alters, repairs, stores, transports, or in any way enhances the value of an article of personal property, or boards, pastures, feeds, trains, improves or transports any animal, shall have a lien upon such article or animal while lawfully in the possession thereof, for the charges agreed upon, or, if no charges be agreed upon, then for his just and reasonable charges for the work done or the board or storage or transportation furnished, to the extent and in the manner provided for in section fourteen of this article, and may retain possession thereof until such charges are paid. Such lien shall be good against the person who deposited the property with the lienor, and against any other person by whose authority or with whose consent the property was deposited. If two or more articles of personal property are made, altered, repaired, stored, transported or enhanced in value as aforesaid, or two or more animals are boarded, pastured, fed, trained, improved or transported as aforesaid, under one contract or agreement, any one or more of such articles or animals may be held under the lien, hereinbefore mentioned, for all of the charges upon all such articles included in such contract or agreement.

§38-11-5. Lien for lodging and board.

The owner or keeper of any hotel, inn, lodginghouse, restaurant, eating house or boardinghouse shall have a lien upon and, to the extent and in the manner provided for in section fourteen of this article, may retain posses-
sion of the baggage, luggage or other personal property of any kind, brought to such hotel, inn, lodginghouse, restaurant, eating house or boardinghouse by, or with the consent of, the owner thereof, for the amount of his lawful claim for lodging, board or other accommodations or facilities furnished by him at that time to such person bringing the same, or to any other person for whose charges the person so bringing such property is liable.


When any humane officer shall provide any neglected or abandoned animal with proper food, shelter and care, he shall have a lien upon such animal for the expense thereof, and such expense shall be charged against the owner of such animal. Until the humane officer shall take possession of the animal or place the animal in the possession of some person other than the owner, to the extent and in the manner provided for in section fourteen of this article, such lien shall not be good against a purchaser of the animal from the owner, for value, and without notice of the facts creating the lien.

§38-11-8. Lien for service of male animals.

The owner of any stallion, jack or bull, that is duly registered under the laws of the state of West Virginia, shall have a lien upon the foal or calf thereof, whenever the service of such stallion, jack or bull was had by contract with the owner, or agent of the owner, of the dam or cow of such foal or calf, at the time of such service. Such lien shall cease unless the person desiring to avail himself thereof shall, within six months from the birth of such foal or calf, file before some magistrate in the county in which such foal or calf may be, his own affidavit, or that of some credible person, stating the amount of his lien against such foal or calf and that such amount is due by contract, also a description of the foal or calf upon which such lien is claimed. Such affidavit shall be filed and preserved by such magistrate, for which service he shall receive any fee provided by law. Upon the filing of such affidavit, such proceedings shall be had for the en-
§38-11-14. Enforcement of lien or pledge.

Any person holding personal property in his possession under a lien or pledge may satisfy such lien in any manner agreed upon between the owner and the lienor or, if there be no such agreement, in the following manner:

The lienor or pledgee shall give a written notice to the person on whose account the goods are held and to any other person known by the lienor to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the lienor's or pledgee's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien or pledge exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than seven days from the delivery of the notice. If delivery of notice is made by mail instead of personal delivery, such delivery shall be by registered or certified mail, return receipt requested, and such delivery shall be complete when such notice is deposited in the United States mail, postage prepaid, addressed to the debtor at his last-known address; and

(d) A statement that unless the claim is paid within the time specified the goods will remain in the possession and control of the lienor or pledgee and he will assert in a court of competent jurisdiction his legal right to hold and sell the property for the amount of the debt and to otherwise proceed for payment of the debt.

If the debt has not been fully satisfied by the day following the date specified for payment in the notice hereinabove provided for, the lienor or pledgee shall either
release the property to its owner or other appropriate
custodian or continue to retain the property and sue upon
the debt and the right of possession in a court of compe-
tent jurisdiction. Any such suit shall proceed expedi-
tiously toward judgment in manner and form prescribed
by law for other civil actions.

Unless a suit to enforce any lien authorized by this
article be brought in a court of competent jurisdiction
within thirty days after the delivery of the notice here-
inabove provided for, such lien shall be discharged.

At any time before judgment in any such suit, any per-
son claiming a right of property or possession in the
property at issue may pay the lienor or pledgee the
amount necessary to satisfy his lien or pledge and the
reasonable expenses and liabilities, including all court
costs, incurred in protecting and proceeding upon the lien
or pledge up to the time of such payment or such person
may execute a bond with good security, conditioned to
pay the lienor who may be damaged by the release of
property under the lien, to be approved by the court, in
a penalty not to exceed the lesser of the amount of the
lien with reasonable court costs thereupon or the value
of the property in the possession of the lienor. The lienor
or pledgee shall deliver the goods to the person making
such payment or posting such bond, if he is a person en-
titled to the possession of the goods or payment of charges
thereon. Otherwise the lienor or pledgee shall retain
possession of the goods according to the terms of the
original contract of deposit and shall proceed upon the
suit.

§38-11-15. Sale or disposition of perishable or hazardous goods
by lienor or pledgee.

1 If goods which are subject to a lien or pledge under this
2 article are such that they are perishable or threaten to
3 decline in value speedily, or are of a hazardous nature,
4 the lienor or pledgee may give such notice to the owner,
5 or to the person in whose name the goods are stored, as
6 is commercially reasonable under the circumstances, to
7 satisfy the lien or pledge upon such goods and to remove
them, and in the event of the failure of such person to
satisfy the lien or pledge and to remove the goods within
the time specified within the notice, the lienor may sell
the goods at public or private sale. If the lienor after a
reasonable effort is unable to sell such goods, he may
dispose of them in any lawful manner, and shall incur no
liability by reason thereof.

§38-11-16. Other remedies of lienor or pledgee.
1 The remedy for enforcing a lien or pledge provided
for in this article does not preclude any other remedies
allowed by law for the enforcement of a lien or pledge
against personal property nor bar the right to recover
so much of the lienor's or pledgee's claim as shall not be
recovered under the provisions of this article.

CHAPTER 142
(S. B. 649—By Mr. Steptoe)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to authoriz­
ing the use of certain net proceeds from certain fines and
forfeitures for the operation of regional correctional facili­
ties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-15. Auditing and payment of claims of magistrates,
justices of the peace and constables; annual state­
ment of sheriff of fines and costs received from
justices and magistrates; payment into state trea­
sury.

All claims by justices and constables for fees due them
in misdemeanor proceedings in the county, instituted
before them on and after the effective date of this section,
shall be audited and examined by the county commission,
and if found correct and if submitted, as provided in the
heretofore existing section fourteen, article seventeen,
chapter fifty of this code, the county commission shall
cause orders to be issued therefor on the sheriff to be
paid out of the general school fund or out of the general
county fund, as the commission may direct. The sheriff
shall annually, during the month of January, render under
oath to the auditor a true statement of the account of
all fines and costs collected by magistrates and trans-
mitted to him and pay into the treasury of the state, the
net proceeds of such fines and costs as exhibited by
such account, to be appropriated as directed by the fifth
section of article twelve of the constitution of this state.
Failure to do so shall be deemed a breach of his official
duty. For the purposes of this section, the net proceeds
of such fines and costs shall be deemed to be the proceeds
remaining after deducting therefrom the lawful fees of
constables and justices of the peace; the cost of auditing
the accounts of justices of the peace, constables and
magistrates by the chief inspector's office; the expenses
for operation and maintenance of the county jail or a
regional correctional facility operated jointly with one or
more other county or counties; the costs of constructing,
reconstructing and renovating any jail facility used for
county prisoners; and periodic payments, if any, for the
establishment of a jail improvement fund in the manner
provided by section nine, article one of this chapter for
constructing, reconstructing or renovating any jail facility
used for county prisoners.

CHAPTER 143
(H. B. 1186—By Mr. Hutchinson)

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

AN ACT to amend article one, chapter fifty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section nine-b, relating to the salaries of magistrate court clerks, magistrate assistants and magistrate court deputy clerks in the Counties of Putnam and Raleigh; establishing such salaries effective the first day of January, one thousand nine hundred eighty-one, and declaring legislative findings and intent with respect thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND THEIR OFFICERS.


(a) The Legislature finds and declares:

(1) That during the regular session of the Legislature, one thousand nine hundred eighty, it adopted certain amendments to sections two, three, eight, nine and eleven of this article in an act designated chapter eighty, acts of the Legislature, regular session, one thousand nine hundred eighty;

(2) That included within the provisions of that act were provisions specifically increasing the number of magistrates for the Counties of Putnam and Raleigh whereby the Legislature provided for the election of three magistrates for the County of Putnam and five magistrates for the County of Raleigh;

(3) That it has come to the attention of the Legislature that the fact of increasing the number of magistrates in the Counties of Putnam and Raleigh has been interpreted as necessitating a decrease in the respective salaries of the magistrate court clerks, magistrate assistants and magistrate court deputy clerks, in those counties effective the first day of January, one thousand nine hundred eighty-one; and

(4) That it was not the intent of the Legislature in enacting
the provisions of chapter eighty, acts of the Legislature, regular
session, one thousand nine hundred eighty, to reduce the
salaries of magistrate court clerks, magistrate assistants and
magistrate court deputy clerks in the Counties of Putnam and
Raleigh.

Therefore, in view of the foregoing findings, it is the intent
of the Legislature in enacting this section to restore the respec-
tive salaries of the magistrate court clerks, magistrate assis-
tants and magistrate court deputy clerks in the Counties of
Putnam and Raleigh to those sums which were applicable to
those various positions prior to the first day of January, one
thousand nine hundred eighty-one, retroactively to that date.

(b) In view of the foregoing findings and purposes, effect-
tive the first day of January, one thousand nine hundred eighty-
one, the respective salaries for magistrate court clerks, magis-
trate assistants and magistrate court deputy clerks in the
Counties of Putnam and Raleigh shall be as follows:

(1) The salary for the magistrate court clerk in the County
of Putnam shall be up to one thousand twenty-six dollars per
month;

(2) The salary for the magistrate court clerk in the County
of Raleigh shall be up to one thousand two hundred fifty-
four dollars per month;

(3) The salary for each magistrate assistant in the County
of Putnam shall be up to seven hundred forty-one dollars per
month;

(4) The salary for each magistrate assistant in the County
of Raleigh shall be up to eight hundred fifty-five dollars per
month; and

(5) The salaries of the various magistrate court deputy
clers for the Counties of Putnam and Raleigh shall be in
amounts up to and not exceeding the amounts paid to the
magistrate assistants in those respective counties.
CHAPTER 144

(Com. Sub. for H. B. 1559—By Mr. Frazier)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections three, eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing increased compensation for magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; and providing for salaries and maximum salary levels to be paid on a population basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.


1 The salary of each magistrate shall be paid by the state.
2 Beginning on the first day of July, one thousand nine hundred eighty-one, magistrates who serve less than ten thousand in population shall be paid annual salaries of fifteen thousand seven hundred fifty dollars; magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of nineteen thousand one hundred twenty-five dollars: Provided, That magistrates in the County of Putnam shall be paid annual salaries of nineteen thousand one hundred twenty-five dollars. Magistrates who serve fifteen thousand or more in population shall be paid annual salaries of twenty-three thousand six hundred twenty-five dollars: Provided, however, That magistrates in the County of Raleigh shall be paid annual salaries of twenty-three thousand six hundred twenty-five dollars. For the purpose
of determining the population served by each magistrate, the
number of magistrates authorized for each county shall be
divided into the population of each county. Magistrates shall
be paid once a month.


In each county having three or more magistrates the judge of
the circuit court, or the chief judge thereof if there is more
than one judge of the circuit court, shall appoint a magistrate
court clerk. In all other counties such judge may appoint a
magistrate court clerk or may by rule require the duties of the
magistrate court clerk to be performed by the clerk of the
circuit court, in which even said circuit court clerk shall be
entitled to additional compensation in the amount of two thou-
sand five hundred dollars per year. In any county a magistrate
court clerk may be appointed prior to the first day of January,
one thousand nine hundred seventy-seven. The magistrate court
clerk shall serve at the will and pleasure of such circuit judge.

Magistrate court clerks shall be paid a monthly salary by
the state. Beginning on the first day of July, one thousand nine
hundred eighty-one, magistrate court clerks serving magistrates
who serve five thousand or less in population shall be paid up
to six hundred ninety-eight dollars per month; magistrate
court clerks serving magistrates who serve more than five
thousand in population but less than ten thousand in popula-
tion shall be paid up to eight hundred ninety-eight dollars per
month; magistrate court clerks serving magistrates who serve
more than ten thousand in population but less than fifteen
thousand in population shall be paid up to one thousand one
hundred fifty-four dollars per month: Provided, however, That
the magistrate court clerk in the County of Putnam shall be
paid up to one thousand one hundred fifty-four dollars per
month; and magistrate court clerks serving magistrates who
serve fifteen thousand or more in population shall be paid
up to one thousand four hundred ten dollars per month:
Provided, however, That the magistrate court clerk in the
County of Raleigh shall be paid up to one thousand four hun-
dred ten dollars per month. For the purpose of determining
the population served by each magistrate, the number of
magistrates authorized for each county shall be divided into
the population of each county. The salary of the magistrate
court clerk shall be established by the judge of the circuit court,
or the chief judge thereof if there is more than one judge of the
circuit court, within the limits set forth in this section.

In addition to other duties as may be imposed by the provi-
sions of this chapter or by the rules of the supreme court of
appeals or the judge of the circuit court, or the chief judge
to thereof if there is more than one judge of the circuit court, it
shall be the duty of the magistrate court clerk to establish and
maintain appropriate dockets and records in a centralized sys-
tem for the magistrate court, to assist in the preparation of
such reports as may be required of the court and to carry out
on behalf of the magistrates, or chief magistrate if a chief
magistrate is appointed, the administrative duties of the court.

The magistrate court clerk or, if there is no magistrate
court clerk in the county, the clerk of the circuit court shall
have the authority to issue all manner of civil process and to
require the enforcement of subpoenas and subpoenas duces
tecum in magistrate court.


In each county there shall be one magistrate assistant for
each magistrate. Each magistrate assistant shall be appointed
by the magistrate under whose authority and supervision and
at whose will and pleasure he shall serve. Such assistant shall
not be a member of the immediate family of any magistrate
and shall not have been convicted of a felony or any misde-
meanor involving moral turpitude and shall reside in the coun-
try where appointed. For the purpose of this section, immediate
family shall mean the relationships of mother, father, sister,
brother, child or spouse.

A magistrate assistant shall have such duties, clerical or
otherwise as may be assigned by the magistrate and as may be
prescribed by the rules of the supreme court of appeals or
the judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court. In addition
to these duties, magistrate assistants shall perform and be
accountable to the magistrate court clerks with respect to the following duties:

(1) The preparation of summons in civil actions;

(2) The assignment of civil actions to the various magistrates;

(3) The collection of all costs, fees, fines, forfeitures and penalties which may be payable to the court;

(4) The submission of such moneys, along with an accounting thereof to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be located in the magistrate clerk’s office;

(6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;

(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant shall be accountable to the magistrate court clerk as the magistrate shall determine.

Magistrate assistants shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty-one, magistrate assistants serving magistrates who serve five thousand or less in population shall be paid up to five hundred sixty-seven dollars per month; magistrate assistants serving magistrates who serve more than five thousand in population but less than ten thousand in population shall be paid up to seven hundred five dollars per month; magistrate assistants serving magistrates who serve more than ten thousand in population but less than fifteen thousand in population shall be paid up to eight hundred thirty-four dollars per month: Provided, That magistrate assistants in the County of Putnam shall be paid up to eight hundred thirty-four dollars.
and magistrate assistants serving magistrates who serve fifteen thousand or more in population shall be paid up to nine hundred sixty-two dollars per month: Provided, however, That magistrate assistants in the County of Raleigh shall be paid up to nine hundred sixty-two dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

CHAPTER 145

(Com. Sub. for H. B. 955—By Mr. Steptoe)

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

AN ACT to amend and reenact section three, article two, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections thirteen and seventeen, article two, chapter sixty-two of said code, all relating to criminal procedures generally and the authority of magistrates to admit persons to bail in certain cases, including cases where persons are held pursuant to capias; clarifying those cases in which magistrates may admit to bail; the issuance of capias or summons in criminal cases and the delivery of persons arrested under capias to court, magistrate or jailer; the conditions for the admission of such persons to bail by a magistrate; and the authority of magistrates to admit to bail in all criminal cases except cases involving murder in the first degree.

Be it enacted by the Legislature of West Virginia:

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

50. Magistrate Courts.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.


1 In addition to jurisdiction granted elsewhere to magistrate courts or a justice of the peace, magistrate courts shall have jurisdiction of all misdemeanor offenses committed in the county and to conduct preliminary examinations on warrants charging felonies committed within the county. A magistrate shall have the authority to issue arrest warrants in all criminal matters, to issue warrants for search and seizure and, except in cases involving murder in the first degree, to set and admit to bail.

10 Magistrate courts shall have the jurisdiction of violations of subsection (c), section four hundred one, article four, chapter sixty-a of this code under the provisions of section four hundred seven of such article, and may discharge the defendant under the provisions of section four hundred seven of said article four. The exercise of such jurisdiction shall not preclude the right of the accused to petition the circuit court of the county for probation under the provisions of section four, article twelve, chapter sixty-two of this code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 2. PRESENTMENTS AND INDICTMENTS.


§62-2-17. Delivery of prisoner to court, magistrate or jailer.


1 When an indictment or presentment is found or made, the court shall award process against the accused to answer to the same, if he be not in custody. Such process, if for a felony, may be a capias or a summons, at the discretion of the court; in all misdemeanor cases, it shall be, in the first instance, a summons, but if a summons be returned executed, or be
§62-2-17. Delivery of prisoner to court, magistrate or jailer.

An officer who, under a capias from a court, arrests a person accused of an offense other than murder in the first degree shall deliver the accused to such court, if sitting, and if such court is not sitting, the officer shall deliver the accused to a magistrate who may admit the accused to bail: Provided, That any such bail granted by a magistrate shall be conditioned upon the appearance by the accused before the court on the date provided in the capias for such appearance, or, if no such date is provided in the capias, then such bail shall be conditioned upon the appearance of the accused on the next day on which such court is sitting. No magistrate shall admit to bail any person arrested under an alias capias. Bail set by a magistrate may be made and posted before the magistrate court clerk and the recognizance and record thereof, together with any money received therefor, shall be forthwith delivered to the clerk of the circuit court.

An officer who, under a capias from a court, arrests a person accused of an offense not bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to the jailer thereof, who shall receive and imprison him.

CHAPTER 146
(S. B. 592—By Mr. Boettner)

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

AN ACT to amend and reenact section five, article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting a party in any trial in magistrate court involving the possession, use or control of rental property to plead, prove and obtain judgment for rent due and owing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. PROCEDURE BEFORE TRIAL.**

§50-4-5. *Return date in civil action; setting of trial date; failure to appear or notify.*

1 Except in matters involving unlawful entry and detainer, each summons in a civil action shall notify the defendant that he must appear within twenty days after service of the summons upon him or that he must otherwise notify the magistrate court by that time that he wishes to contest the matter. In matters involving unlawful entry and detainer such appearance or notification shall be required within five days after service of the summons.

2 If the magistrate court is notified by the defendant that he wishes to contest the matter a trial date shall be set and all parties notified thereof. Such trial date shall be at least five days from notification thereof unless all parties consent otherwise thereto.

3 If no appearance or other notification is made within twenty days after the service of the summons on the defendant, or, in matters involving unlawful entry and detainer within five days after service of summons, judgment by default may be entered in accordance with the provisions of section ten of this article.

4 At any trial in any matter involving unlawful entry and detainer and in the trial of any case in any way involving the possession, use or control of rental property, it is permissible for a party to plead, prove and obtain judgment for all rent due and owing the party.

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**CHAPTER 147**

(S. B. 576—By Mr. Boettner)

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

AN ACT to amend and reenact section one, article six, chapter fifty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to authorizing magistrate court clerks, deputy clerks and assistants to proceed upon certain suggestions of salary and wages on an intercounty basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

1 (a) The provisions of articles three, four, five, five-a, five-b and six, chapter thirty-eight of this code, except as the same are in conflict with the provisions of this chapter or are clearly applicable only to courts of record, shall apply to the enforcement of judgments rendered in magistrate court and process therefor shall issue from magistrate court. Process issued in violation of such provisions shall be void. The form of such process shall be in accord with the rules of the supreme court of appeals. No such process shall issue until after ten days after the judgment is rendered or, if a motion to set aside such judgment is then pending, until after ten days after the determination of such motion.

(b) A magistrate court clerk, deputy clerk or magistrate assistant before whom a suggestion of salary and wages is instituted pursuant to the provisions of articles five-a and five-b, chapter thirty-eight of this code shall, in the event it would be more appropriate for such suggestion to be conducted in another county, forward all fees collected together with the appropriate papers to the magistrate court of the appropriate county, and the clerk, deputy clerk or magistrate assistant receiving such papers and fees shall proceed with the suggestion the same as if it were actually instituted before him.
AN ACT to amend and reenact section thirteen, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general environmental protection performance standards for surface mining; variances; revegetation of reclaimed areas.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SURFACE MINING AND RECLAMATION.


(a) Any permit issued by the director pursuant to this article to conduct surface-mining operations shall require that such surface-mining operations will meet all applicable performance standards of this article, and such other requirements as the reclamation commission shall promulgate.

(b) The following general performance standards shall be applicable to all surface mines and shall require the operation as a minimum to:

1. Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

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

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: *Provided*, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum shall backfill, grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *Provided, however*, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this article: *Provided further*, That the reclamation commission shall promulgate rules and regulations governing variances to the requirements for return to approximate original contour.
or highwall elimination and where adequate material is not
available from surface-mining operations permitted after the
effective date of this article for (A) underground mining
operations existing prior to the third day of August, one
thousand nine hundred seventy-seven, or (B) for areas upon
which surface mining prior to the first day of July, one
thousand nine hundred seventy-seven, created highwalls;

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

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

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

(7) Ensure that all prime farm lands are mined and
reclaimed in accordance with the specifications for soil
removal, storage, replacement and reconstruction established
by the United States secretary of agriculture and the soil
conservation service pertaining thereto. The operator, as a
minimum, shall be required to: (A) Segregate the A horizon of
the natural soil, except where it can be shown that other
available soil materials will create a final soil having a greater
productive capacity, and if not utilized immediately,
stockpile this material separately from other spoil, and
provide needed protection from wind and water erosion or
contamination by other acid or toxic material; (B) segregate
the B horizon of the natural soil, or underlying C horizons or
other strata, or a combination of such horizons or other strata
that are shown to be both texturally and chemically suitable
for plant growth and that can be shown to be equally or more
favorable for plant growth than the B horizon, in sufficient
quantities to create in the regraded final soil a root zone of
comparable depth and quality to that which existed in the
natural soil, and if not utilized immediately, stockpile this
material separately from other spoil and provide needed
protection from wind and water erosion or contamination by
other acid or toxic material; (C) replace and regrade the root
zone material described in subparagraph (B) above with
proper compaction and uniform depth over the regraded
spoil material; and (D) redistribute and grade in a uniform
manner the surface soil horizon described in subparagraph
(A) above;

(8) Create, if authorized in the approved surface-mining
and reclamation plan and permit, permanent impoundments
of water on mining sites as part of reclamation activities in
accordance with regulations promulgated by the reclamation
commission;

(9) Where augering is the method of recovery, seal all
auger holes with an impervious and noncombustible material
in order to prevent drainage except where the director
determines that the resulting impoundment of water in such
auger holes may create a hazard to the environment or the
public welfare and safety: Provided, That the director may
prohibit augering if necessary to maximize the utilization,
recoverability or conservation of the mineral resources or to
protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing
hydrologic balance at the mine site and in associated off-site
areas and to the quality and quantity of water in surface and
ground water systems both during and after surface-mining
operations and during reclamation by: (A) Avoiding acid or
other toxic mine drainage; (B) conducting surface-mining
operations so as to prevent to the extent possible, using the
best technology currently available, additional contributions
of suspended solids to streamflow or runoff outside the
permit area, but in no event shall contributions be in excess
of requirements set by applicable state law; (C) constructing
an approved drainage system pursuant to subparagraph (B)
of this subdivision prior to commencement of surface-mining operations, such system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the director, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) such other actions as the reclamation commission may prescribe;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director of the department of mines, and (B) such operations will result in improved resource recovery, abatement of water pollution or
elimination of hazards to the health and safety of the public: Provided, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the reclamation commission, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed permit area excluding drainage structures, haulroads and access roads unless there will be blasting on or near such structures or roads: Provided, That this notice shall suffice as daily notice to residents or occupants of such areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director of the department of mines; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the area identified in subparagraph (A) of this
subdivision, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of such structures and submit the results to the director and a copy to the resident or owner making the request. The area of the survey shall be determined by the director in accordance with regulations promulgated by the reclamation commission;

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

(A) If the director finds in writing that:

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

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

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

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

(vi) Provisions for the off-site storage of spoil will comply
with subdivision (22), subsection (b), section thirteen of this article; (B) If the reclamation commission has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as he deems necessary; (C) If variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from the date of issuance of the permit; and (D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section twelve of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section twelve and section twenty-six of this article, have been fully complied with; (17) Ensure that the construction, maintenance and post-mining conditions of access and haulroads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, shall be exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures; (18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to significantly alter the normal flow of water; (19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;
(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the director issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining and use;

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

(22) Place all excess spoil material resulting from surface mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if such placement provides additional stability and prevents mass movement; (F) where the toe of the
spoil rests on a downslope, a rock toe buttress, of sufficient
size to prevent mass movement, is constructed; (G) the final
configuration is compatible with the natural drainage pattern
and surroundings and suitable for intended uses; (H) design
of the spoil disposal area is certified by a qualified registered
professional engineer in conformance with professional stan-
dards; and (I) all other provisions of this article are met:

Provided, That where the excess spoil material consists of at
least eighty percent, by volume, sandstone, limestone, or
other rocks that do not slake in water, the director may ap-
prove alternate methods for disposal of excess spoil material,
including fill placement by dumping in a single lift, on a site
specific basis: Provided, however, That the services of a qual-
ified registered professional engineer experienced in the de-
sign and construction of earth and rockfill embankment are
utilized: Provided further, That such approval shall not be
unreasonably withheld if the site is suitable;

(23) Meet such other criteria as are necessary to achieve
reclamation in accordance with the purposes of this article,
taking into consideration the physical, climatological and
other characteristics of the site;

(24) To the extent possible, using the best technology cur-
rently available, minimize disturbances and adverse impacts
of the operation on fish, wildlife and related environmental
values, and achieve enhancement of such resources where
practicable; and

(25) Retain a natural barrier to inhibit slides and erosion
on permit areas where outcrop barriers are required: Pro-
vided, That constructed barriers may be allowed where (A)
natural barriers do not provide adequate stability, (B) natural
barriers would result in potential future water quality de-
terioration, and (C) natural barriers would conflict with the
goal of maximum utilization of the mineral resource: Pro-
vided, however, That at a minimum, the constructed barrier
must be of sufficient width and height to provide adequate
stability and the stability factor must equal or exceed that of
the natural outcrop barrier: Provided further, That where
water quality is paramount, the constructed barrier must be
composed of impervious material with controlled discharge
points.
384 (c) (1) The reclamation commission may prescribe proce-
dures pursuant to which the director may permit surface-
mining operations for the purposes set forth in subdivision (3)
of this subsection.

388 (2) Where an applicant meets the requirements of subdivi-
sions (3) and (4) of this subsection, a permit without regard to
the requirement to restore to approximate original contour
set forth in subsection (b) or (d) of this section may be granted
for the surface mining of coal where the mining operation will
remove an entire coal seam or seams running through the
upper fraction of a mountain, ridge or hill, except as provided
in subparagraph (A), subdivision (4) of this subsection, by
removing all of the overburden and creating a level plateau or
a gently rolling contour with no highwalls remaining, and
capable of supporting postmining uses in accordance with
the requirements of this subsection.

390 (3) In cases where an industrial, commercial, woodland,
agricultural, residential or public use is proposed for the
postmining use of the affected land, the director may grant a
permit for a surface-mining operation of the nature described
in subdivision (2) of this subsection where: (A) The proposed
postmining land use is deemed to constitute an equal or
better use of the affected land, as compared with premining
use; (B) the applicant presents specific plans for the proposed
postmining land use and appropriate assurances that such
use will be: (i) Compatible with adjacent land uses; (ii)
practicable with respect to achieving the proposed use; (iii)
supported by commitments from public agencies where
appropriate; (iv) practicable with respect to private financial
capability for completion of the proposed use; (v) planned
pursuant to a schedule attached to the reclamation plan so as
to integrate the mining operation and reclamation with the
postmining land use; and (vi) designed by a person approved
by the director in conformance with standards established to
assure the stability, drainage and configuration necessary for
the intended use of the site; (C) the proposed use would be
compatible with adjacent land uses, and existing state and
local land use plans and programs; (D) the director provides
the county commission of the county in which the land is
located and any state or federal agency which the director, in
his discretion, determines to have an interest in the proposed
use, an opportunity of not more than sixty days to review and
comment on the proposed use; and (E) all other requirements
of this article will be met.

(4) In granting any permit pursuant to this subsection, the
director shall require that: (A) A natural barrier be retained to
inhibit slides and erosion on permit areas where outcrop
barriers are required: Provided, That constructed barriers
may be allowed where (i) natural barriers do not provide
adequate stability, (ii) natural barriers would result in
potential future water quality deterioration, and (iii) natural
barriers would conflict with the goal of maximum utilization
of the mineral resource: Provided, however, That at a
minimum, the constructed barrier must be of sufficient width
and height to provide adequate stability and the stability
factor must equal or exceed that of the natural outcrop
barrier: Provided further, That where water quality is
paramount, the constructed barrier must be composed of
impervious material with controlled discharge points; (B) the
reclaimed area is stable; (C) the resulting plateau or rolling
contour drains inward from the outslopes except at specific
points; (D) no damage will be done to natural watercourses;
(E) spoil will be placed on the mountaintop bench as is
necessary to achieve the planned postmining land use:
Provided, That all excess spoil material not retained on the
mountaintop shall be placed in accordance with the
provisions of subdivision (22), subsection (b) of this section;
and (F) ensure stability of the spoil retained on the
mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this
subsection shall be reviewed not more than three years from
the date of issuance of the permit, unless the applicant
affirmatively demonstrates that the proposed development is
proceeding in accordance with the terms of the approved
schedule and reclamation plan.

(d) In addition to those general performance standards
required by this section, when surface mining occurs on
slopes of twenty degrees or greater, or on such lesser slopes as
may be defined by regulation after consideration of soil and
climate, no debris, abandoned or disabled equipment, spoil
material or waste mineral matter will be placed on the natural
downslope below the initial bench or mining cut: Provided,
That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the order requirements of this section can still be met.

(e) The reclamation commission may promulgate regulations pursuant to which the director may permit variances from the requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material shall be required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The reclamation commission shall promulgate regulations for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates the pile or the landowners involved, enter upon the premises where any such coal processing waste pile exists and may take or order to be taken such remedial action as may be necessary or expedient to secure such coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the department of natural resources for such purposes, and such sums so expended...
shall be recovered from any responsible operator or
landowner, individually or jointly, by suit initiated by the
attorney general at the request of the director. For purposes
of this subsection “operates” or “operated” means to enter
upon a coal processing waste pile, or part thereof, for the
purpose of disposing, depositing, dumping coal processing
wastes thereon or removing coal processing waste therefrom,
or to employ a coal processing waste pile for retarding the
flow of or for the impoundment of water.

CHAPTER 149
(S. B. 87—By Mr. Gainer)

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

AN ACT to amend and reenact section one, article six-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an annual report by the interstate mining commission to the governor, the Legislature and the governor's advisory body; setting forth the financial affairs of the interstate mining commission; allocating among the party states to the interstate mining compact the amounts of legislative appropriations expected of each party state; and setting forth the powers and duties of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. INTERSTATE MINING COMPACT.

§20-6B-1. Enactment of compact.

1 The “Interstate Mining Compact” is hereby enacted into
2 law and entered into with all other jurisdictions legally
3 joining therein in the form substantially as follows:
Article I. Findings and Purposes.

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining.

(2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(3) Encourage, with due recognition of relevant regional,
physical and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II. Definitions.

As used in this compact, the term:

(a) “Mining” means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores and other solid matter from its original location, and the preparation, washing, cleaning or other treatment of minerals, ores or other solid matter so as to make them suitable for commercial, industrial or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) “State” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or possession of the United States.

Article III. State Programs.

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:
(a) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(b) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(c) The institution and maintenance of suitable programs for adaption, restoration and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

**Article IV. Powers.**

In addition to any other powers conferred upon the interstate mining commission, established by Article V of this compact, such commission shall have power to:

(a) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation and patterns of community or regional development or change.

(b) Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

(d) Gather and disseminate information relating to any of the matters within the purview of this compact.

(e) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

(f) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.
(g) Study and make recommendations with respect to any practice, process, technique or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(h) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V. The Commission.

(a) There is hereby created an agency of the party states to be known as the “Interstate Mining Commission,” hereinafter called “the commission.” The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV (c), IV (g) and IV (h) or requesting, accepting or disposing of funds, services or other property pursuant to this paragraph, Article V (g), V (h) or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided, That action of the
commission shall be only at a meeting at which a majority of
the commissioners, or their alternates, is present. The
commission may establish and maintain such facilities as
may be necessary for the transacting of its business. The
commission may acquire, hold and convey real and personal
property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its
members, a chairman, a vice chairman, and a treasurer. The
commission shall appoint an executive director and fix his
duties and compensation. Such executive director shall serve
at the pleasure of the commission. The executive director, the
treasurer and such other personnel as the commission shall
designate shall be bonded. The amount or amounts of such
bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other
merit system laws of any of the party states, the executive
director with the approval of the commission, shall appoint,
remove or discharge such personnel as may be necessary for
the performance of the commission's functions, and shall fix
the duties and compensation of such personnel.

(f) The commission may establish and maintain,
individually or in conjunction with a party state, a suitable
retirement system for its employees. Employees of the
commission shall be eligible for social security coverage in
respect of old age and survivor's insurance: Provided, That
the commission take such steps as may be necessary
pursuant to the laws of the United States to participate in
such program of insurance as a governmental agency or unit.
The commission may establish and maintain or participate in
such additional programs of employee benefits as it may
decide appropriate.

(g) The commission may borrow, accept or contract for
the services of personnel from any state, the United States or
any other governmental agency, or from any person, firm,
association or corporation.

(h) The commission 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, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, Legislature and advisory body required by Article V (a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

Article VI. Advisory, Technical and Regional Committees.

The commission shall establish such advisory, technical and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems relating to reclamation, development or use of mined land or any other matters of concern to the commission.

Article VII. Finance.

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of
its estimated expenditures for such periods as may be
required by the laws of that party state for presentation to the
legislature thereof.

(b) Each of the commission's budgets of estimated
expenditures shall contain specific recommendations of the
amount or amounts to be appropriated by each of the party
states. The total amount of appropriations requested under
any such budget shall be apportioned among the party states
as follows: One half in equal shares, and the remainder in
proportion to the value of minerals, ores and other solid
matter mined. In determining such values, the commission
shall employ such available public source or sources of
information as, in its judgment, present the most equitable
and accurate comparisons among the party states. Each of the
commission's budgets of estimated expenditures and
requests for appropriations shall indicate the source or
sources used in obtaining information concerning value of
minerals, ores and other solid matter mined.

(c) The commission shall not pledge the credit of any
party state. The commission may meet any of its obligations
in whole or in part with funds available to it under Article V
(h) of this compact: Provided, That the commission takes
specific action setting aside such funds prior to incurring any
obligation to be met in whole or in part in such manner.
Except where the commission makes use of funds available
to it under Article V (h) hereof, the commission shall not incur
any obligation prior to the allotment of funds by the party
states adequate to meet the same.

(d) The commission shall keep accurate accounts of all
receipts and disbursements. The receipts and disbursements
of the commission shall be subject to the audit and
accounting procedures established under its bylaws. All
receipts and disbursements of funds handled by the
commission shall be audited yearly by a qualified public
accountant and the report of the audit shall be included in
and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any
reasonable time for inspection by duly constituted officers of
the party states and by any persons authorized by the
commission.
(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Effect on Other Laws.

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any 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 and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.
AN ACT to amend and reenact section thirty-three, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section thirty-four-a, all relating to coal mine health and safety; mine rescue teams; requiring communication and lifeline at each fresh air base; allowing rescue teams to advance beyond fresh and base under certain circumstances; mandatory safety programs; duties of director of department of mines; duties of coal operators; approval of program; provision of copies of programs; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE I. ADMINISTRATION; ENFORCEMENT.


§22-1-34a. Mandatory safety programs; duties of director of department of mines; duties of coal operators; approval of program; provision of copies of program; penalties.

§22-1-33. Mine rescue crews.

1 The director of the state department of mines is hereby authorized to have trained and employed at the rescue stations, operated by the department within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on
requisition approved by the director of the department of mines. The director of the department of mines may remove any member of a rescue crew at any time.

After the effective date of this article, it shall be the duty and responsibility of the department of mines to see that all rescue teams be properly trained by a qualified instructor of the department of mines or such persons who have a certificate of training from the United States bureau of mines.

To qualify for membership of a mine rescue crew, an applicant shall be not more than fifty years of age and shall pass on at least an annual basis a physical examination by a licensed physician. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator, and a copy shall be furnished to the director of the department of mines. All rescue or recovery teams performing recovery work shall be under the jurisdiction of the department of mines guided by the mine rescue apparatus and auxiliary equipment manual.

When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workmen's compensation subscription of such emergency employer.

During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

Two-way communication and lifeline or its equivalent shall
be provided at each fresh air base for all mine rescue or recovery teams, and no mine rescue team member shall advance more than one thousand feet in by the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, such rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That lifeline or its equivalent shall be provided in by each fresh air base for all mine rescue or recovery teams.

Each rescue or recovery team performing work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

A rescue or recovery team shall immediately return to the fresh air base when any team member's atmospheric pressure depletes to sixty atmospheres.

§22-1-34a. Mandatory safety programs; penalties.

(a) Within six months of the effective date of this section, the director of the department of mines, in consultation with the state board of coal mine health and safety, shall promulgate rules and regulations in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The regulations may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the director of the department of mines.

(b) Within six months of the date when the regulations required in subsection (a), above, become final, each operator shall develop and submit to the director of the department of mines a comprehensive mine safety program for each mine, in accordance with such regulations. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director of the department of mines regarding the modification or revision of such program, prior
to submission of such program to the director. Upon sub-
mission of such program the director shall have ninety days
to approve, reject or modify such program. If the program
is rejected, the director shall give the operator a reasonable
time to correct and resubmit such program. Each program
which is approved shall be reviewed, at least annually, by the
director. An up-to-date copy of each program shall be placed
on file in the department of mines and further copies shall be
made available to the miners of each mine and their
representatives. Each operator shall undertake all efforts
necessary to assure total compliance with the appropriate
safety program at each mine and shall fully implement all
portions of such program.

(c) Any person violating any provision of this section
is guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than one hundred nor more than one
thousand dollars, or imprisoned in the county jail for not
more than six months, or both fined and imprisoned.

CHAPTER 151
(Com. Sub. for S. B. 122—By Mr. Harman)

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

AN ACT to amend article two, chapter twenty-two of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
fifty-five-a, relating to requiring all surface mine employees to
wear safety helmets when working in areas of possible danger
of head injury; providing an exemption while operating
machinery with specified cab protection; and requiring safety
helmets to meet certain specifications.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-two of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be amended,
by adding thereto a new section, designated section fifty-five-a, to
read as follows:
ARTICLE 2. COAL MINES.


1 All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: Provided, That such employees shall not be required to wear such safety helmet while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head Protection, Standard Z89.1, unless the director of the department of mines finds that the dangers set forth herein may be present: Provided, however, That such employees shall be required to wear safety helmets while not operating such equipment including periods of travel to and from such equipment.

16 The safety helmets required hereunder shall meet the specifications for such helmets as prescribed by the mine health and safety administration.

CHAPTER 152

(Com. Sub. for S. B. 559—By Mr. Ward and Mr. Rogers)

[Passed April 10, 1981; in effect from passage. Approved by the Governor.]
section five-a, article six, chapter forty-seven; to further amend said article six by adding thereto a new section, designated section five-d; and to further amend said code by adding thereto a new chapter, designated chapter forty-seven-a, all relating to maximum interest rates and finance charges; increasing the maximum allowable finance charge for certain industrial loan company loans, consumer credit sales, motor vehicle and motor home sales and loans involving a specified quantity of real estate, revolving charge accounts, revolving loan accounts, lenders other than supervised lenders, and supervised lenders, all of which increased maximum allowable finance charges terminate after the first day of July, one thousand nine hundred eighty-two; eliminating the use of the sum of the digits method, commonly referred to as the “Rule of 78,” in the computation of rebates upon prepayment of installment loans payable over more than thirty-six months; and providing for determination of rebates upon prepayment of loans payable over thirty-six months or more by applying the rate of finance charge required to be disclosed in the transaction, according to the actuarial method; definition of “supervised loan”; establishing the West Virginia lending and credit rate board; authorizing said board to prescribe quarterly alternative maximum interest rates or finance charges on loans, credit sales or transactions, forbearances or other similar transactions, and providing for compensation for its members; requiring quarterly reports; specifying factors to be considered in setting rates; allowing different rates within ranges of balances; staffing of and offices for the West Virginia lending and credit rate board; creation of revolving fund and assessment of fee for revolving fund for board operations; requiring report to and review by Legislature; validity of contracts, and usury; applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.
46A. West Virginia Consumer Credit and Protection Act.
47. Regulation of Trade.
47A. West Virginia Lending and Credit Rate Board.

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

*§31-7-11. Powers of industrial loan companies; limitation of powers.

1 (a) In addition to the general powers conferred upon
corporations by the laws of this state, each industrial loan
company shall have power to exercise by its board of
directors or duly authorized officers or agents, subject to law,
all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
secured by the obligation of such person, firm or corporation,
or otherwise; and, in addition, to receive and require uniform
periodical installments for the repayment of the loan;

10 (2) Sell or offer for sale its secured or unsecured evidences
or certificates of indebtedness, and such secured or
unsecured evidences or certificates of indebtedness are
hereby defined as money for the purpose of taxation, but
every such evidence or certificate of indebtedness shall state,
on its face, in a clearly visible manner approved by the
commissioner, that such evidence or certificate of
indebtedness is not federally insured;

* Clerk’s Note: This section was also amended by S. B. 360, now Chapter 153, which was
passed on April 11, 1981.
(3) Buy and sell bonds or choses in action of any person, firm or corporation;

(4) Impose a charge of five cents for each default in the payment of one dollar, or fraction thereof, at the time at which any periodical installment for the repayment of a loan becomes due;

(5) Demand and receive for loans or for notes, bills or evidences of debt discounted or purchased, such rate of interest as may be agreed upon by the parties, not exceeding the lawful rate of interest, and it shall be lawful to receive such interest in advance. As an alternative to the loan finance charge allowed by this subsection, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, an industrial loan company may contract for and receive a loan finance charge not exceeding twenty-one percent per annum calculated according to the actuarial method on that part of the unpaid balance of the principal which is five thousand dollars or less. 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 loan finance charge does not exceed that permitted by this section;

(6) Charge for a loan made pursuant to this section, one dollar for each fifty dollars, or fraction thereof, loaned, for expenses including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking the acknowledgement of necessary papers, or other expenses, incurred in making the loan. No additional charge shall be made except to reimburse the corporation for money actually expended for additional service actually rendered the borrower. No charge shall be collected unless a loan shall have been made as the result of such examination or investigation;

(7) Purchase, hold and convey real estate as follows:

(A) Such as shall be necessary for the convenient transaction of its business, including with its office other apartments or offices to rent as a source of income, which investment shall not exceed twenty-five percent of its paid-in capital stock and surplus;
(B) Such as is mortgaged to it in good faith by way of security for loans made by or money due to such industrial loan company;

(C) Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(D) Such as is acquired by sale on execution or judgment or decree of any court in its favor.

Industrial loan companies shall not purchase, hold or convey any real estate in any other case or for any other purpose whatever. Real estate shall be conveyed only by authority of the board of directors of any such industrial loan company. No real estate acquired in the cases contemplated in paragraphs (B), (C) and (D), subdivision (7) of this subsection shall be held for a longer time than five years, unless such period shall be extended by the commissioner of banking.

(b) An industrial loan company shall not:

(1) Accept or receive deposits;

(2) Make any loan under the provisions of this article for a longer period than two years from the date thereof, except upon express authorization of the board of directors of such company;

(3) Hold at any one time the primary obligation or obligations of any one person, firm or corporation, for more than ten percent of the amount of the paid-up capital and surplus of such industrial loan company;

(4) Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial loan company;

(5) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;
(6) Have outstanding at any time its evidences or certificates of indebtedness, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

(7) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depository by a vote of the majority of the board of directors;

(8) Pledge or hypothecate any of its securities or notes owned by it to any creditor, except that such companies shall have the power to rediscount or to borrow money from any source in addition to selling its evidences or certificates of indebtedness, but the aggregate amount of such rediscounting and borrowing shall at no time exceed the sum total of the capital, surplus and reserve funds of such company, and the security so pledged therefor shall not exceed two times the amount borrowed and rediscounted;

(9) Pay any fees, bonuses, commissions, rewards, or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used; nor shall any industrial loan company under this article enter into any contract for such purpose or purposes, or for the purpose of giving to or vesting in any other corporation any power or authority over the organization or management of corporations under this article.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

In addition to the interest rate provided in article six, chapter forty-seven of this code and elsewhere by law, a banking institution may charge and collect a reasonable amount to cover the expenses incurred in procuring reports and information respecting loans and the value of and title to property offered as security therefor, and a charge of three dollars may be made for any loan or forbearance of money or other thing where the interest at the rate of six percent per
annum would not amount to that sum and the same shall not be a usurious charge or rate of interest. Except in cases where it is otherwise specially provided by law, any banking institution authorized to do, and doing business in this state, may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan, and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the bank shall rebate the unearned portion of such charge as specified in section five-d, article six, chapter forty-seven of this code. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable.

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

Article
1. Short Title, Definitions and General Provisions.
4. Supervised Lenders.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


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

3. “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) "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) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, 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 include (a) applicable sales, use, privilege, and excise and documentary stamp taxes, (b) the cash price of accessories or related services such as delivery, installation, 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 insurance;

(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 banking 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), "consumer 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 there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting 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 transactions 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 consolidation 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.

"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.

"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 consumer 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 computed 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.

"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.

"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 payments previously made by him are applied to the purchase price.

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

"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, irrespective 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:
351 (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
352 (b) Subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.
353 (44) "Supervised lender" means a person authorized to make or take assignments of supervised loans.
354 (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 two thousand dollars, and in which the rate of the loan finance charge exceeds eight percent per year as determined according to the actuarial method.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Finance charges generally.

§46A-3-103. Sales finance charge for revolving charge accounts other than certain sales of real estate.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

§46A-3-106. Loan finance charge for revolving loan accounts.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-101. Finance charges generally.

1 (1) With respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on that part of the unpaid balance of the amount financed which is fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balance of the amount financed which is in excess of fifteen hundred dollars calculated according to the actuarial method.

11 (2) This section does not limit or restrict the manner of calculating the sales finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the sales finance charge does not exceed that permitted by this section. If the sale is precomputed:
(a) The sales 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 of this article.

(3) For the purposes of this section, the term of a sale agreement commences on the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. 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 seller 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.

(4) Subject to classifications and differentiations the seller may reasonably establish, he may make the same sales finance charge on all amounts financed within a specified range. A sales finance charge so made does not violate subsection (1) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

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

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

(6) Notwithstanding any provision of this section to the
contrary, with respect to a consumer credit sale involving a
motor vehicle or a mobile home or a consumer credit sale
from the same seller of both a mobile home and the real estate
upon which such mobile home is or will be located, or a
consumer credit sale of a mobile home where a security
interest in real estate owned by the buyer is given to the seller
as collateral, a seller may from the effective date of this
section until and including the first day of July, one thousand
nine hundred eighty-two, contract for and receive a sales
finance charge not exceeding eighteen percent per year on
the unpaid balance calculated according to the actuarial
method: Provided, That the quantity of real estate involved
with the consumer credit sale of a mobile home upon which
such finance charge is contracted for and received shall not
exceed one acre.

(7) As an alternative to the loan finance charge allowed by
section one hundred one, subsection (1) of this article, from
the effective date of this subsection until and including the
first day of July, one thousand nine hundred eighty-two, with
respect to a consumer credit sale, other than a sale of real
estate subject to the provisions of section one hundred two of
this article or a sale pursuant to a revolving charge account, a
seller may contract for and receive a sales finance charge not
exceeding eighteen percent per year on the unpaid balance of
the amount financed calculated according to the actuarial
method.

§46A-3-103. Sales finance charge for revolving charge accounts
other than certain sales of real estate.

(1) With respect to a consumer credit sale made pursuant
to a revolving charge account, other than sales of real estate
pursuant to section one hundred two of this article, the
parties may contract for the payment by the buyer of a sales
finance charge not exceeding that permitted in this section.

(2) A sales finance charge may be made in each billing
cycle which is a percentage of an amount not exceeding the
greatest of:

(a) The average daily balance of the account, or

(b) The balance of the account at the beginning of the first
day of the billing cycle, less all payments on and credits to
such account during such billing cycle and excluding all
charges to such account during such billing cycle, or

(c) The median amount within a specified range within
which the average daily balance of the account or the balance
of the account at the beginning of the first day of the billing
cycle, less all payments on and credits to such account during
such billing cycle and excluding all charges to such account
during such billing cycle, is included. A charge may be made
pursuant to this paragraph only if the seller, subject to
classifications and differentiations he may reasonably
establish, makes the same charge on all balances within the
specified range and if the percentage when applied to the
median amount within the range does not produce a charge
exceeding the charge resulting from applying that percentage
to the lowest amount within the range by more than eight
percent of the charge on the median amount.

(3) If the billing cycle is monthly, the sales finance charge
may not exceed one and one-half percent on the first seven
hundred fifty dollars of unpaid balance and one percent on
the unpaid balance in excess of seven hundred fifty dollars. If
the billing cycle is not monthly, the maximum charge is that
percentage which bears the same relation to the applicable
monthly percentage as the number of days in the billing cycle
bears to thirty. 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.

(4) Notwithstanding subsection (3), if there is an unpaid
balance on the date as of which the sales finance charge is
applied, the seller 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.

(5) As an alternative to the loan finance charge allowed by
section one hundred three, subsection (3) of this article, from
the effective date of this subsection until and including the
first day of July, one thousand nine hundred eighty-two, with
respect to a consumer credit sale made pursuant to a
revolving charge account, other than sales of real estate
pursuant to section one hundred two of this article, if the billing cycle is monthly, the sales finance charge may not exceed one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. 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.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

(1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account, (a) a bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, section five-a, or section five-b, article six, chapter forty-seven of this code, (b) an industrial loan company, as defined in section three, article seven, chapter thirty-one, may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by subdivisions (5) and (6), subsection (a), section eleven, article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter forty-seven of this code, (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the
provisions of section five, section five-a or section five-b, article six, chapter forty-seven of this code.

(2) As an alternative to the loan finance charge allowed by section one hundred four, subsection (1) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, a lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding eighteen percent per annum calculated according to the actuarial method.

(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 loan finance charge does not exceed that permitted by this section.

(4) Notwithstanding any provision of this section to the contrary, with respect to a consumer loan involving a motor vehicle or a mobile home or with respect to a consumer loan to finance the sale from one seller of both a mobile home and the real estate upon which such mobile home is or will be located, or with respect to a consumer loan where a security interest in real estate owned by the borrower is given to the lender as collateral for such loan, a lender may from the effective date of this section and until and including the first day of July, one thousand nine hundred eighty-two, contract for and receive a loan finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved in such consumer loan transactions involving a mobile home and real estate where such finance charge is contracted for and received shall not exceed one acre.

(5) If the loan is precomputed:

(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 of this article.

(6) Notwithstanding subsection (1), the lender may contract for and receive a minimum loan finance charge of
not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(7) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

§46A-3-106. Loan finance charge for revolving loan accounts.

(1) With respect to a consumer loan made pursuant to a revolving loan account, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding that permitted in this section.

(2) A loan finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

(a) The average daily balance of the debt,

(b) 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, or

(c) 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. A charge may be made pursuant to this subdivision only if the lender, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.
(3) If the billing cycle is monthly, the loan finance charge may not exceed one and one-half percent on the first seven hundred fifty dollars of unpaid principal balance and one percent on the unpaid principal balance in excess of seven hundred fifty dollars. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. 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.

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the loan finance charge is applied the lender 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 subsection if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(5) As an alternative to the loan finance charge allowed by section one hundred six, subsection (3) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, with respect to a consumer loan made pursuant to a revolving loan account, if the billing cycle is monthly, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. 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.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

(1) When a consumer credit sale or consumer loan is
precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78.")

(2) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code.

(3) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date maturity is accelerated. Such judgment shall bear interest until paid at the rate of six percent per annum.

ARTICLE 4. SUPERVISED LENDERS.

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

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

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

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

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

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

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:

(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.

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.

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 section (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 excluding 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 additional charges.
(7) As an alternative to the loan finance charge allowed by section one hundred seven, subsection (2) of this article, from the effective date of this subsection until and including the first day of July, one thousand nine hundred eighty-two, with respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge, calculated according to the actuarial method, which may not exceed the total of:

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

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

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

§46A-4-111. Maximum interest when loan is in excess of sixteen 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 sixteen 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 sixteen hundred dollars for principal.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5a. Interest charges on loans repayable in installments.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise.

§47-6-5a. Interest charges on loans repayable in installments.

Except in cases where it is otherwise specially provided by law, parties may contract for and charge interest for a secured or unsecured loan, repayable in installments at a rate not in
excess of: (a) Six percent per annum upon the principal amount of the loan, for the entire period of the loan, and add such charge to the principal amount of the loan; or (b) six percent per annum upon the face amount of the instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance but in no case shall the interest on such a discount loan exceed an annual percentage rate of fifteen percent per annum calculated according to the actuarial method: Provided, That upon prepayment in full of a precomputed loan, the creditor shall rebate that portion of such charge in the manner set forth in section five-d of this article. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable. Nothing herein contained shall affect or restrict the right of the parties under section five of this article to contract in writing for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the prepaid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such finance charge attributable to any particular monthly installment period shall be that proportion of the charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method,
commonly referred to as the "Rule of 78." For prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction (i) repayable according to its original terms over a period of thirty-six months or less, (ii) in which unequal or irregular or other than substantially equal consecutive monthly installments are payable, the commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation of rebates consistent with the Rule of 78.

(b) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction, repayable by its original terms over a period of greater than thirty-six months, an amount shall be rebated of not less than the unearned portion of the finance charge calculated by applying the rate of finance charge which was required by applicable law to be disclosed in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment. In instances where no rate of finance charge was required by law or otherwise to be disclosed, the unearned portion of the finance charge shall be calculated by applying the finance charge which was charged in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period following prepayment.

(c) For purposes of the rebate of unearned finance charges as required by this section, a prepayment in full shall include repayment by a new loan, extension of credit, refinancing, consolidation, forbearance or otherwise.

(d) As an alternative to the Rule of 78 method of rebate of determining the unearned finance charge required by this section, a creditor may rebate unearned finance charges under any other method which gives a greater rebate to the debtor than the rebate determined by the Rule of 78.

(e) The provisions governing rebates as set forth in this section shall apply to all transactions entered into on or after the first day of September, one thousand nine hundred eighty-one. For transactions entered into prior to the first day of September, one thousand nine hundred eighty-one, the
provisions in effect prior to the effective date of this section of
the respective chapters of this code shall be utilized to
determine the rebate of unearned finance charges.

(f) For consumer credit sales or consumer loans subject to
the provisions of chapter forty-six-a of this code the
provisions of article five, chapter forty-six-a, govern the
imposition of liability and penalties for charging interest or a
finance charge in excess of the maximum rate allowed under
the provisions of this section. In all other instances, the
provisions of this article govern the imposition of liability and
penalties for charging interest or a finance charge in excess of
the maximum allowed under this section.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT
RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-l-1. Legislative findings; creation, membership, powers and duties of board.

§47A-l-2. Board staff, officers, funding.

§47A-l-3. Report to and review by Legislature; validity of contracts; usury.

§47A-l-4. Applicability of the West Virginia Administration Procedures Act; legislative and judicial review.

§47A-l-1. Legislative findings; creation, membership, powers
and duties of board.

(a) The Legislature hereby finds and declares that:

(1) Changes in the permissible charges on loans, credit
sales or transactions, forbearances or other similar
transactions requires specialized knowledge of the needs of
the citizens of West Virginia for credit for personal and
commercial purposes and knowledge of the availability of
such credit at reasonable rates to the citizens of this state
while affording a competitive return to persons extending
such credit;

(2) Maximum charges on loans, credit sales or
transactions, forbearances or other similar transactions
executed in this state should be prescribed from time to time
to reflect changed economic conditions, current interest rates
and finance charges throughout the United States and the
availability of credit within the state in order to promote the
making of such loans in this state; and

(3) The prescribing of such maximum interest rates and
finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration, and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe quarterly the maximum interest rates and finance charges on loans, credit sales or transactions, forbearances or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers, and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;

(2) The West Virginia state treasurer;

(3) The West Virginia banking commissioner;

(4) The deans of the schools of business and administration at Marshall University and West Virginia University;

(5) The director of the division of consumer protection of the attorney general's office;

(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment.
The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet at least quarterly or more frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding quarter for any loans, credit sales or transactions, forbearances or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending such credit, and such other factors as the board may determine.

(e) Within twenty days next preceding the end of the given quarter, the board shall prescribe by order in accordance with the provisions of subsection (d) of this section the maximum rates of interest and finance charge for the next succeeding quarter for any loan, credit sale, forbearance, or similar transaction made pursuant to this section and shall cause such maximum rate of interest and finance charge to be issued and disseminated to the public, such maximum rate of interest and finance charge to be effective on the first day of the next succeeding quarter.

(f) Notwithstanding any other provisions of this section, not later than the first day of September, one thousand nine hundred eighty-one, the board shall prescribe by order the maximum rate of interest and finance charge for loans, credit sales or transactions, forbearances, or similar transactions pursuant to this section for the quarter in which this section shall become effective and shall, at the earliest possible date, prescribe the maximum rate of interest and finance charge for any such loan, credit sale or transaction, forbearance or
similar transaction for the next succeeding quarter. The board shall issue and disseminate such maximum rates of interest and finance charge to the public. The board shall thereafter determine and issue and disseminate the maximum rate of interest and finance charge for any such loan, credit sale or transaction, forbearance or similar transaction in conformity with the other provisions of this section.

(g) Each member of the board, except those whose regular salary is paid by the state of West Virginia, shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each 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 by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the revolving fund established by section two of this article upon a requisition upon the state auditor, properly certified by the banking commissioner.

(h) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor, and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

§47A-1-2. Board staff, offices, funding.

Under the direction of the chairperson of the board, the board shall be entitled to utilize the staff of the West Virginia banking department and the offices of the board shall be those of the West Virginia banking department. In order to defray the cost of the board's operations including the cost of its utilization of the staff of the West Virginia banking department, the board shall establish the West Virginia lending and credit rate board revolving fund.

On or before the first day of July of each year, all supervised financial organizations and supervised lenders shall pay a yearly fee of fifty dollars into the revolving fund established by the board. The fees paid into this revolving fund shall be
13 utilized to pay the costs and expenses of the board and all
14 incidental costs and expenses necessary for its operations.

§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

1 On or before the fifteenth day of January of each calendar
2 year commencing with the fifteenth day of January, one
3 thousand nine hundred eighty-two, the board shall prepare a
4 report to the Legislature detailing its (i) activities during the
5 prior year including all rules and regulations adopted or
6 modified during the year, (ii) recommendations regarding
7 legislative action on rates of interest, finance charges, and
8 usury in light of the credit needs of West Virginia’s residents
9 and businesses, and (iii) plans for staffing and organization of
10 the board. Unless the Legislature or committee of the
11 Legislature delegated to review the report and actions of the
12 board specifically rejects certain portions of the report or
13 certain prior or proposed acts of the board, the board may
14 continue to implement prior actions or implement proposed
15 aspects of its actions which are within the scope of its duties
16 under this article.

17 Contracts made in good faith in conformity with an order of
18 the board setting the maximum rates of interest and finance
19 charge are valid, notwithstanding that after such contract is
20 made or finance charge is received, such order is amended or
21 rejected by the Legislature. No person who contracts for or
22 receives a finance charge in good faith in conformity with an
23 order of the board is liable in any action or suit for any
24 penalty, forfeiture or recovery based on a charge of usury,
25 notwithstanding that after such contract is made or finance
26 charge is received, such order is amended or rejected by the
27 Legislature.

§47A-1-4. Applicability of the West Virginia Administrative
Procedures Act; legislative and judicial review.

1 Because of the volatile nature of the credit market and the
2 necessity of prompt action by the board, all orders, rules and
3 regulations, and other procedures adopted by the board
4 relating to setting maximum interest rates and finance
5 charges are specifically exempted from the provisions of the
6 West Virginia Administrative Procedures Act, chapter
7 twenty-nine-a of this code. All other orders, rules and
regulations, and other procedures adopted by the board not relating to the setting of maximum rates of interest and finance charges shall be made in accordance with the provisions of the Administrative Procedures Act, chapter twenty-nine-a of this code.

All actions of the board relating to the setting of maximum interest rates and finance charges are subject to review as set forth under section three of this article. In instances when the board exceeds or fails to appropriately exercise its authority under this article to set maximum interest rates and finance charges, the actions of the board may be reviewed initially only in the circuit court of Kanawha County, West Virginia.

AN ACT to amend and reenact sections eleven and twelve, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restricting the issuance of evidences of indebtedness by industrial loan companies by requiring approval in advance of their issuance by the state commissioner of banking and allowing the cash reserves of said companies required on said evidences to be invested in specific short-term investments secured by United States government obligations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-11. Powers of industrial loan companies; limitation of powers.
§31-7-12. Cash reserves
§31-7-11. Powers of industrial loan companies; limitation of powers.

(a) In addition to the general powers conferred upon corporations by the laws of this state, each industrial loan company shall have power to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to:

1. Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise; and, in addition, to receive and require uniform periodical installments for the repayment of the loan;

2. Sell or offer for sale, with prior written approval of the commissioner, its secured or unsecured evidences or certificates of indebtedness, and such secured or unsecured evidences or certificates of indebtedness are hereby defined as money for the purpose of taxation, but every such evidence or certificate of indebtedness shall state, on its face, in a clearly visible manner approved by the commissioner, that such evidence or certificate of indebtedness is not federally insured;

3. Buy and sell bonds or choses in action of any person, firm or corporation;

4. Impose a charge of five cents for each default in the payment of one dollar, or fraction thereof, at the time at which any periodical installment for the repayment of a loan becomes due;

5. Demand and receive for loans or for notes, bills or evidences of debt discounted or purchased, such rate of interest as may be agreed upon by the parties, not exceeding the lawful rate of interest, and it shall be lawful to receive such interest in advance;

6. Charge for a loan made pursuant to this section, one dollar for each fifty dollars, or fraction thereof, loaned, for expenses including any examination or investigation of the character and circumstances of the borrower, comaker or surety, and the drawing and taking the acknowledgment of necessary papers, or other expenses, incurred in making the...

*Clerk's Note: This section was also amended by S. B. 559, now Chapter 152, which was passed on April 10, 1981.*
loan. No additional charge shall be made except to reimburse
the corporation for money actually expended for additional
service actually rendered the borrower. No charge shall be
collected unless a loan shall have been made as the result of
such examination or investigation;

(7) Purchase, hold and convey real estate as follows:

(A) Such as shall be necessary for the convenient
transaction of its business, including with its office other
apartments or offices to rent as a source of income, which
investment shall not exceed twenty-five percent of its paid-in
capital stock and surplus;

(B) Such as is mortgaged to it in good faith by way of
security for loans made by or money due to such industrial
loan company;

(C) Such as is conveyed to it in satisfaction of debts
previously contracted in the course of its dealings;

(D) Such as is acquired by sale on execution or judgment
or decree of any court in its favor.

Industrial loan companies shall not purchase, hold or
convey any real estate in any other case or for any other
purpose whatever. Real estate shall be conveyed only by
authority of the board of directors of any such industrial loan
company. No real estate acquired in the cases contemplated
in paragraphs (B), (C) and (D), subdivision (7) of this
subsection shall be held for a longer time than five years,
unless such period shall be extended by the commissioner of
banking.

(b) An industrial loan company shall not:

(1) Accept or receive deposits;

(2) Make any loan under the provisions of this article for a
longer period than two years from the date thereof, except
upon express authorization of the board of directors of such
company;

(3) Hold at any one time the primary obligation or
obligations of any one person, firm or corporation, for more
than ten percent of the amount of the paid-up capital and
surplus of such industrial loan company;
(4) Hold at any one time the obligation or obligations of persons, firms or corporations purchased from any person, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial loan company;

(5) Make any loan or discount on the security of its own capital stock (controlling and voting stock, if there be more than one class), unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so purchased or acquired shall be sold at public or private sale or otherwise disposed of within ninety days from the time of its purchase or acquisition;

(6) Have outstanding at any time its evidences or certificates of indebtedness, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

(7) Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depository by a vote of the majority of the board of directors;

(8) Pledge or hypothecate any of its securities or notes owned by it to any creditor, except that such companies shall have the power to rediscount or to borrow money from any source in addition to selling its evidences or certificates of indebtedness, but the aggregate amount of such rediscounting and borrowing shall at no time exceed the sum total of the capital, surplus and reserve funds of such company, and the security so pledged therefor shall not exceed two times the amount borrowed and rediscounted;

(9) Pay any fees, bonuses, commissions, rewards, or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used; nor shall any industrial loan company under this article enter into any contract for such purpose or purposes, or for the purpose of giving to or vesting in any other corporation any power or authority over the organization or management of corporations under this article.
§31-7-12. Cash reserves.

(a) Every industrial bank organized pursuant to this article shall at all times maintain a cash reserve equal to five percent of its aggregate deposits and for such purpose the regulatory, reporting and penalty provisions of section twenty-two, article four, chapter thirty-one-a of this code shall apply to such reserves as shall the provision of said section twenty-two with respect to the form or nature of such reserves.

(b) Every industrial loan company organized pursuant to the provisions of this article shall at all times maintain a cash reserve equal to five percent of its issued and outstanding evidences or certificates of indebtedness and, upon approval by the commissioner, such reserves may take the form of agreements, not to exceed a seven-day term, to purchase and resell United States treasury and United States government agency obligations and overnight federal funds sold secured by United States treasury or United States agency obligations.

*Clerk's Note: This section was also amended by S. B. 184, now chapter 154, which was passed on April 10, 1981.

CHAPTER 154

(S. B. 184—By Mr. Palumbo and Mr. Rogers)

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

AN ACT to amend and reenact section twelve, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article four, chapter thirty-one-a of said code, all relating to considering industrial banks and banking institutions which comply with the reserve requirements of the Federal Reserve Act to be in full compliance with the state reserve requirements.
Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

*§31-7-12. Cash reserves.

(a) Every industrial bank organized pursuant to this article shall at all times maintain a cash reserve equal to five percent of its aggregate deposits and for such purpose the regulatory, reporting and penalty provisions of section twenty-two, article four, chapter thirty-one-a of this code shall apply to such reserves as shall the provision of said section twenty-two with respect to the form or nature of such reserves.

Compliance on the part of any industrial bank with the reserve requirements of the Federal Reserve Act, as amended prior to the thirty-first day of January, one thousand nine hundred eighty-one, shall be considered full compliance with the provisions of this subsection. No such industrial bank may be required to carry or maintain a reserve other than such as required under terms of the Federal Reserve Act, as amended prior to the thirty-first day of January, one thousand nine hundred eighty-one.

(b) Every industrial loan company organized pursuant to the provisions of this article shall at all times maintain a cash reserve equal to five percent of its issued and outstanding evidences or certificates of indebtedness and the commissioner may prescribe by rule or regulation the form or nature of such reserves.

*Clerk's Note: This section was also amended by S. B. 360, now Chapter 153, which was passed on April 11, 1981.
CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

Each state banking institution, except industrial banks created and organized pursuant to the provisions of article seven, chapter thirty-one of this code, shall at all times maintain on hand as a reserve in lawful money of the United States of America an amount equal to at least seven percent of the aggregate of all of its deposits which are subject to withdrawal on demand and three percent of its time deposits. Whenever the commissioner of banking shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by rule or regulation from time to time change such requirements as to reserves against demand or time deposits, or both, but the reserves so prescribed shall in no event be less than those specified in this section nor more than twice those specified. Whenever such reserve shall fall below that required, the institution shall not thereafter make any new loan or investment until the required reserve shall be restored. For the purpose of computing such reserve, all deposits requiring notice of thirty days or more for withdrawal and time certificates of deposit and Christmas savings shall be deemed time deposits, and all checking accounts, certified checks, cashier's checks, demand certificates of deposit and balances due other banks shall be deemed demand deposits. But in lieu of lawful money on hand, four fifths of such reserve may consist of balances payable on demand from any national or state bank doing business in this state or solvent banking institutions in other states. The reserve balances required herein shall be computed on the basis of average daily net deposit balances and average daily currency and coin during biweekly periods. The required reserve balance of each bank shall be computed at the close of business each day based upon its net deposit balances and currency and coin at the opening of business on the same day. The biweekly period shall end at the close of business on days to be fixed by the commissioner in his promulgated rules and regulations. When, however, the reserve computation period ends with a nonbusiness day, or
two or more consecutive nonbusiness days, such
nonbusiness day or days may, at the option of the banking
institution, and whether or not it had a deficiency in reserve
balances in such computation period, be included in the next
biweekly computation period.

The commissioner shall, by rule and regulation, require
regular reports from such banking institutions, which reports
shall be submitted at such times and contain such
information as will enable the commissioner to adequately
supervise the maintenance of reserves under this section.
Penalties for any deficiencies in the required reserves of any
banking institution shall be assessed monthly by the
commissioner on the basis of average daily deficiencies
during each of the computation periods ending in the
preceding calendar month. Such penalties shall be assessed
at a rate of two percent per annum above the lowest rate
applicable to borrowings by member banks from the federal
reserve bank of the district in which such deficient institution
is located on the first day of the calendar month in which the
deficiencies occurred. Such penalties shall be paid by the
commissioner into the treasury of the state of West Virginia
and credited to the general fund.

Compliance on the part of any banking institution with the
reserve requirements of the Federal Reserve Act, as amended
prior to the thirty-first day of January, one thousand nine
hundred eighty-one, shall be considered full compliance with
the provisions of this section. No such bank may be required
to carry or maintain a reserve other than such as required
under terms of the Federal Reserve Act, as amended prior to
the thirty-first day of January, one thousand nine hundred
eighty-one.

CHAPTER 155
(Com. Sub. for S. B. 274—By Mr. Heck)

[Passed April 9, 1981; in effect ninety days from passage. Approved by the Governor.]
chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eight by adding thereto a new section, designated section twelve, all relating to definitions; reporting by police of stolen vehicles or items of special mobile equipment; reporting of the recovery of such vehicles and equipment; prohibiting receiving or transferring of or injuring or tampering with stolen vehicles or items of special mobile equipment; prohibiting the altering or changing of engine numbers and other numbers with fraudulent intent; prohibiting knowingly buying, receiving, possessing, selling, disposing of or offering for sale certain items from which certain identifying marks or numbers have been altered, covered, defaced or destroyed; recovery of special mobile equipment; sale of unclaimed special mobile equipment; penalties.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Words and Phrases Defined.
8. Special Antitheft Laws.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.
1 Except as otherwise provided in this chapter the following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this article:

(a) “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
(c) "Motorcycle" means every motor vehicle, including motor-driven cycles and mopeds as defined in sections five and five-a, article one, chapter seventeen-c of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

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

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

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

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

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

(j) "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(k) "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
(l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) "Specially constructed vehicles" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

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

(o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

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

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to, trucks used for spraying trees and plants: Provided, That said vehicle shall not be let for hire at any time.

(r) "Special mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including, without limitation, farm equipment, implements of husbandry, road construction or maintenance machinery, ditch-digging
apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well-drillers, wood-sawing equipment, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock-drilling equipment and earth-moving equipment. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subdivision.

(s) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

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

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

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

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

(x) "Person" means every natural person, firm, copartnership, association or corporation.

(y) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

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

(aa) "Dealer" or "dealers" is a general term meaning, depending upon the context in which used, either a new
motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of such dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) "Licensed dealer" or "licensed dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(dd) "Transporter" means every person engaged in the business of delivery vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by such manufacturer where his books and records are kept and a large share of his business is transacted.

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

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-1. Report by police of stolen and recovered vehicles or special mobile equipment.

§17A-8-2. Reports by owners or lienors of stolen and recovered vehicles or special mobile equipment.

§17A-8-3. Action by department on report of stolen or embezzled vehicle or special mobile equipment.

§17A-8-6. Injuring or tampering with vehicle or special mobile equipment.
§17A-8-7. Vehicles or special mobile equipment without manufacturers' numbers.
§17A-8-8. Altering or changing engine or other numbers.
§17A-8-12. Recovery of special mobile equipment; chain of custody; sale of unclaimed special mobile equipment; penalties.

§17A-8-1. Report by police of stolen and recovered vehicles or special mobile equipment.

1. Every sheriff, chief of police, member of the department of public safety or peace officer upon receiving reliable information that any vehicle registered hereunder or any item of special mobile equipment has been stolen shall immediately report such theft to the department unless prior thereto information has been received of the recovery of such vehicle or item of special mobile equipment. Upon receiving a report of a stolen or embezzled item of special mobile equipment, or the recovery thereof, the department shall immediately report the information to the national crime information center maintained by the federal bureau of investigation. Any said officer upon receiving information that any such vehicle or item of special mobile equipment, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the local sheriff's office, police department, or department of public safety and to the department.

§17A-8-2. Reports by owners or lienors of stolen and recovered vehicles or special mobile equipment.

1. The owner, or person having a lien or encumbrance upon a registered vehicle or any item of special mobile equipment which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

8. Every owner or other person who has given any such notice must notify the department of a recovery of such vehicle or special mobile equipment.

§17A-8-3. Action by department on report of stolen or embezzled vehicle or special mobile equipment.

1. The department upon receiving a report of a stolen or embezzled vehicle or any item of special mobile equipment as
hereinbefore provided shall file and appropriately index the
same and shall, if the same is registered or titled, immediately
suspend such registration and/or certificate of title of the
vehicle or item of special mobile equipment so reported, and
shall not transfer the registration of the same until such time
as it is notified in writing that such vehicle or item of special
mobile equipment has been recovered.

The department shall at least once each week compile and
maintain at its headquarters office a list of all vehicles or
items of special mobile equipment which have been stolen or
embezzled or recovered as reported to it during the preceding
week and such list shall be open to inspection by any peace
officer or other person interested in any such vehicle or item
of special mobile equipment. A copy of each such weekly list
shall be forwarded to the superintendent of the department of
public safety.

The department shall publish once a month a list of all
vehicles or items of special mobile equipment stolen, embezzled or recovered during the previous month and shall
forward a copy of the same to every sheriff and to all police
departments in cities of this state with over five thousand
inhabitants. Such list shall also be forwarded to the state
department of public safety.

§17A-8-6. Injuring or tampering with vehicle or special mobile
equipment.

(a) Any person who either individually or in association
with one or more persons willfully injures or tampers with
any vehicle or breaks or removes any part or parts of or from a
vehicle without the consent of the owner is guilty of a
misdemeanor.

Any person who with intent to commit any malicious
mischief, injury, or other crime climbs into or upon a vehicle
whether it is in motion or at rest or with like intent attempts
to manipulate any of the levers, starting mechanism, brakes,
or other mechanism or device of a vehicle while the same is at
rest and unattended or with like intent sets in motion any
vehicle while the same is at rest and unattended is guilty of a
misdemeanor.
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14  (b) Any person, either individually or in association with
15  one or more persons, who shall willfully injure or damage any
16  item of special mobile equipment or break or remove any
17  parts from an item of special mobile equipment, without the
18  consent of the owner, which injury, damage, or breakage or
19  removal of parts shall be of an amount of two hundred dollars
20  or more, shall be guilty of a felony. If the injury, damage, or
21  breakage or removal of parts shall be of an amount which is
22  less than two hundred dollars, such person or persons shall
23  be guilty of a misdemeanor.

§17A-8-7. Vehicles or special mobile equipment without
manufacturers' numbers.

1  (a) Any person who knowingly buys, receives, disposes of,
2  sells, offers for sale, or has in his possession any motor
3  vehicle, or engine removed from a motor vehicle, from which
4  the manufacturer's serial or engine number or other
5  distinguishing number or identification mark or number
6  placed thereon under assignment from the department has
7  been removed, defaced, covered, altered or destroyed for the
8  purpose of concealing or misrepresenting the identity of said
9  motor vehicle or engine is guilty of a misdemeanor, and, upon
10  a second or subsequent conviction under this section, the
11  conviction shall be for a felony.

12  (b) Any person who knowingly buys, sells, receives,
13  disposes of, conceals, transports, causes to be transported, or
14  has in his possession special mobile equipment or special
15  mobile equipment tires from which the manufacturer's serial
16  number, motor number or other distinguishing number has
17  been removed, covered, altered, defaced or destroyed shall be
18  guilty of a felony.

§17A-8-8. Altering or changing engine or other numbers.

1  (a) No person shall with fraudulent intent deface, destroy
2  or alter the manufacturer's serial or engine number or other
3  distinguishing number or identification mark of a motor
4  vehicle nor shall any person place or stamp any serial, engine,
5  or other number or mark upon a motor vehicle, except one
6  assigned thereto by the department. Any violation of this
7  provision is a misdemeanor.

8  This section shall not prohibit the restoration by an owner
of an original serial, engine, or other number or mark when
such restoration is made under permit issued by the
department, nor prevent any manufacturer from placing in
the ordinary course of business numbers or marks upon
motor vehicles or parts thereof.

(b) Any person who removes, covers, alters or defaces, or
causes to be destroyed, removed, covered, altered or defaced,
the manufacturer's serial number, the motor number or other
distinguishing number on special mobile equipment or
special mobile equipment tires, the property of another, for
any reason, shall be guilty of a felony.

§17A-8-12. Recovery of special mobile equipment; chain of
custody; sale of unclaimed special mobile
equipment; penalties.

(a) When an item of special mobile equipment has been
lawfully seized and remains in the custody of the
law-enforcement authority having seized it, if at any time the
true owner thereof shall appear and prove to the satisfaction
of such law-enforcement authority his ownership of and
entitlement to such item of special mobile equipment, it may
be returned to such owner subject to its being made available
for use in any criminal prosecution under this article.

(b) The law-enforcement authority shall take reasonable
steps to locate the owner, including, but not limited to,
notifying local equipment dealer, notifying equipment
manufacturer and placing legal advertisements detailing
confiscated equipment in newspapers. The law-enforcement
authority shall take reasonable precautions to protect the
equipment. The owner of the special mobile equipment shall
pay the costs incurred by the law-enforcement authority for
advertising, transporting and storing such special mobile
equipment.

(c) If, after six months, no person has appeared and
proved he is the true owner of an item of special mobile
equipment seized under this article and prosecution has been
instituted, the court in which such prosecution has been
instituted may sell said item of special mobile equipment
under such terms as are commercially reasonable: Provided,
That notice of sale 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 shall be the county in which such prosecution was initially instituted. The proceeds of such sale shall be applied, first, to the payment of any expenses incurred in taking possession, storing and selling such special mobile equipment; and the balance, if any, shall be paid over to the general receiver of the court in the county in which the prosecution was instituted for its application to that county’s general revenues.

(d) Notwithstanding the provisions of article eleven of this chapter, any person convicted of a felony under the provisions of subsection (b), section six, subsection (b), section seven or subsection (b), section eight of this article shall be confined in the penitentiary not less than one nor more than ten years and fined not more than five hundred dollars, or, in the discretion of the court, be confined in the county jail for not more than one year and be fined not more than five hundred dollars.

Notwithstanding the provisions of article eleven of this chapter, any person convicted of a misdemeanor under the provisions of subsection (b), section six of this article shall be confined in the county jail for a term not to exceed one year or fined not more than five hundred dollars, or both.

CHAPTER 156
(S. B. 654—Originating in the Senate Committee on Finance)

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

AN ACT to amend and reenact section thirteen, article two, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-three; to amend and reenact sections four and fourteen, article three; sections one and five, article four; section ten, article four-a; section fifteen, article six; section seven, article nine; sections ten, eleven and fourteen, article ten, all of said chapter; to amend and reenact sections eight, eleven and twelve, article two and section nine, article three, chapter
seventeen-b of said code; and to amend and reenact section two, article two, chapter seventeen-d of said code, all relating to the department of motor vehicles; increasing fees for records of vehicle registration; providing for a fee when checks are dishonored; increasing fees for certificate of title, special registration plates, temporary registration plates, transfers of registration, duplicate registrations, recording of liens, vehicle reinstatements, registration transfers, special registrations, driver's licenses; providing for photographs on driver's licenses; increasing fees for duplicates and late applications therefor; driver's license reinstatement fees; and abstracts of operating records.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17B. Motor Vehicle Operators' and Chauffeurs' Licenses.
17D. Motor Vehicle Safety Responsibility Law.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

Article
2. Department of Motor Vehicles.
3. Original and Renewal of Registration; Issuance of Certificates of Title.
4. Transfers of Title or Interest.
4A. Liens and Encumbrances on Vehicles to be shown on Certificate of Title; Notice to Creditors and Purchasers.
6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, etc.
9. Offenses against Registration Laws and Suspension or Revocation of Registration.
10. Fees for Registration, Licensing, etc.

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

(a) Officers and employees of the department designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the department as he may designate are hereby authorized to prepare under the seal of the department and deliver upon request a certified copy of any record of the department, charging a fee of one dollar for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof.

(c) The commissioner and such officers of the department as he may designate are hereby authorized to furnish to any person requesting same in writing information regarding the registration of any vehicle at a fee of one dollar for each such registration about which information is furnished.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

If a check tendered to the department of motor vehicles is returned to the department unpaid for any reason, there shall be a penalty of ten dollars to be paid to the department in addition to the amount due the department. This penalty applies to checks tendered for any fee or tax authorized to be collected by the department and is in addition to any other penalties imposed in this code: Provided, That in the event a specific penalty is set forth for the nonpayment or late payment of fees and taxes, the penalty set forth in this section applies only to the extent that such penalty exceeds any specific penalty for nonpayment or late payment.

The penalty provided in this section shall be used by the
ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the department of motor vehicles or any other officer charged with such duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of such vehicle. Such application shall be upon a blank form to be furnished by the department of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon such vehicle, the names and addresses of the holders of such liens and such other information as the department of motor vehicles may require. The application shall be signed and sworn to by the applicant.

A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase shall be deemed the value thereof for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or secondhand; if the vehicle be acquired through gift, or by
any manner whatsoever, unless specifically exempted in this
section, the present market value of the vehicle at the time of
the gift or transfer shall be deemed the value thereof for the
purposes of this section. No certificate of title for any vehicle
shall be issued to any applicant unless such applicant shall
have paid to the department of motor vehicles the tax
imposed by this section which shall be five percent of the true
and actual value of said vehicle whether the vehicle be
acquired through purchase, by gift, or by any other manner
whatsoever except gifts between husband and wife or
between parents and children: Provided, however, That
husband or wife, or parents or children previously have paid
said tax on the vehicles so transferred to the state of West
Virginia. The tax imposed by this section shall not apply to
vehicles to be registered as Class H vehicles, or Class S
vehicles, as defined in section one, article ten of this chapter,
which are used or to be used in interstate commerce, nor shall
the tax imposed by this section apply to titling of vehicles by
a registered dealer of this state for resale only, nor shall the
tax imposed by this section apply to titling of vehicles by this
state or any political subdivisions thereof, or by any volunteer
fire department or duly chartered rescue or ambulance squad
organized and incorporated under the laws of the state of
West Virginia as a nonprofit corporation for protection of life
or property. The total amount of revenue collected by reason
of this tax shall be paid into the state road fund and expended
by the commissioner of highways for matching federal aid
funds allocated for West Virginia. In addition to said tax,
there shall be a charge of five dollars for each original
certificate of title or duplicate certificate of title so issued:
Provided further, That this state or any political subdivision
thereof, or any such volunteer fire department, or duly
chartered rescue squad, shall be exempted from payment of
such charge.

Such certificate shall be good for the life of the vehicle, so
long as the same is owned or held by the original holder of
such certificate, and need not be renewed annually, or any
other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner
of a motor vehicle and the tax herein imposed previously has
been paid, to the department of motor vehicles, on that
vehicle, he shall not be required to pay such tax.
A person who has paid the tax imposed by this section shall not be required to pay the tax a second time for the same motor vehicle, but he shall be required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that such tax shall be paid by such person when the title to such vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter shall be subject to the privilege tax imposed by this section: Provided, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for such vehicle is accompanied by an affidavit stating that such vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, shall not be subject to the tax imposed by this section, but shall be taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

If any person making any affidavit required under any provision of this section, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one hundred dollars or be imprisoned in the county jail for a period not to exceed thirty days, or in the discretion of the court be subject to both such fine and imprisonment.

§17A-3-14. Registration plates generally.

The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.
Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

Such registration plate and the required letters and numerals thereon, except the year number for which issued or the date of expiration, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight, said registration numbering to begin with number two.

The color of the registration plates shall be blue and gold of reflectorized material.

The department shall not issue, permit to be issued, or distribute any special numbers except as follows:

(a) The governor shall be issued registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(b) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of free schools, auditor, treasurer, commissioner of agriculture, and the attorney general, the members of both houses of the Legislature, including the clerks thereof, the judges of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of said judges shall be residents of West Virginia, a special registration plate for a motor vehicle owned by him or his wife, but not to exceed one plate for each such official, which plate shall bear the initials of the individual, or any combination of letters not to exceed three, which combination of letters shall be limited to a contraction of the proper name or names of such individual or a familiar form applicable to such names or a name by which the individual is generally known, and shall not include any name that might be construed as a slogan or advertisement which has no relation to the name or names of such individual or to a
reasonable name by which he is generally known, together
with a designation of his office and which plate shall
supersede, during his term of office and while such motor
vehicle is owned by him or his wife, the regular numbered
plate assigned to him.

(c) Upon appropriate application, any owner of a motor
vehicle subject to Class A registration under the provisions of
this article may request that the department issue to him a
registration plate bearing a maximum of five letters or
numbers. The department shall attempt to comply with such
request wherever possible and shall promulgate appropriate
rules and regulations for the orderly distribution of such
plates: Provided, That for purposes of this subdivision, such
registration plates so requested and issued shall include all
plates bearing the numbers two through two thousand and
shall be subject to the provisions of subdivision (e) of this
section.

(d) Upon appropriate application, there shall be issued to
any disabled veteran, who is exempt from the payment of
registration fees under the provisions of this chapter, a
registration plate which bears the letters “DV” in red, and
also the regular identification numerals in red.

(e) In addition to the regular registration fees set forth in
section three, article ten of this chapter, a fee of forty dollars
shall be paid to the department in each case in which an
application for a special registration plate is made as provided
in subdivisions (a), (b) and (c): Provided, however, That
nothing in this section shall be construed to require a charge
for a free prisoner of war license plate authorized by other
provisions of this code.

Notwithstanding the provisions of this section, or of any
other provision of this chapter, the commissioner may, in his
discretion, issue a type of registration plate suitable for
permanent use on motor vehicles, trailers and semitrailers,
together with appropriate devices to be attached thereto to
indicate the year for which such vehicles have been properly
registered or the date of expiration of such registration. The
design of such plates shall be determined by the
commissioner.
ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

§17A-4-5. Transfer by operation of law.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

Whenever the owner of a registered vehicle transfers or assigns his title, or interest thereto, the registration of such vehicle shall expire: Provided, however, That such owner, if he has made application to the department to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of forty days, but in no event longer than forty days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of five dollars, issue a new certificate showing the use to be made of such plates. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the department the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the department the transfer fee of five dollars with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he receives a new registration card from the department.
The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of five dollars as an exchange fee and upon the payment of such additional fees as are necessary to equalize the value of the plates surrendered with the value of registration plates desired, receive in exchange a set of plates and registration card for a vehicle of a different class.

§17A-4-5. Transfer by operation of law.

Whenever the title or interest of an owner in or to a registered vehicle shall pass to another otherwise than by voluntary transfer, the registration thereof shall expire and the vehicle shall not be operated upon the highways unless and until the person entitled to possession of such vehicle shall apply for and obtain the registration thereof, except that such vehicle may be operated by the person entitled to its possession or his legal representative upon the highways for a distance not exceeding seventy-five miles upon displaying upon such vehicle the registration plates issued to the former owner, or in the event title has become vested in the person holding a lien or encumbrance upon said vehicle such person may apply to the department for and obtain special plates as may be issued under this chapter to dealers and may operate any said repossessed vehicle under such special plates only for purposes of transporting the same to a garage or warehouse or for purposes of demonstrating or selling the same: Provided, That the commissioner is authorized to transfer the plates of a deceased person to his legal heir or legatee upon payment of a transfer fee of five dollars.

Upon any transfer the new owner may secure a new registration and certificate of title upon proper application and upon presentation of the last certificate of title if available, and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels in such case.

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-10. Fee for recording and release of lien.

The department of motor vehicles is hereby authorized to
charge a fee of five dollars for the recording of any lien
created by the voluntary act of the owner and endorsing it
upon such title certificate issued pursuant to this article, and
the department of motor vehicles is hereby authorized to
charge a fee of fifty cents for recordation of any release of a
lien created by the voluntary act of the owner: Provided, That
no charge shall be made for the endorsement and recordation
of liens or releases thereof as provided under section nine of
this article.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS;
SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser
by a dealer to be operated on the streets and highways
pending receipt of the annual registration plate from the
department for such vehicle, the commissioner may, subject
to the limitations and conditions hereinafter set forth, deliver
temporary vehicle registration plates or markers to dealers
who in turn may, subject to the limitations and conditions
hereinafter set forth, issue the same to purchasers of vehicles,
but such purchasers must comply with the pertinent
provisions of this section.

(b) Application by a dealer to the commissioner for such
temporary registration plates or markers shall be made on the
form prescribed and furnished by the commissioner for such
purpose and shall be accompanied by a fee of three dollars for
each such temporary registration plate or marker. No refund
or credit of fees paid by dealers to the commissioner for
temporary registration plates or markers shall be allowed,
except that in the event the commissioner discontinues the
issuance of such temporary plates or markers, dealers
returning temporary registration plates or markers to the
commissioner may petition for and be entitled to a refund or a
credit thereof. No temporary registration plates or markers
shall be delivered by the commissioner to any dealer in house
trailers only, and no such temporary plates or markers shall
be issued for or used on any house trailer for any purpose.

(c) Every dealer who has made application for and
received temporary registration plates or markers shall
maintain in permanent form a record of all temporary
registration plates or markers delivered to him, a record of all temporary registration plates or markers issued by him, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each such record shall be kept for a period of at least three years from the date of the making thereof. Every dealer who issues a temporary registration plate or marker shall, within three days after he issues such plate or marker, send to the department a copy of the temporary registration plate or marker certificate properly executed by such dealer and the purchaser. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer shall not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor shall a dealer issue a temporary registration plate or marker to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the department to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter; nor shall a dealer lend to anyone, or use on any vehicle which he may own, a temporary registration plate or marker. It shall be unlawful for any dealer to issue any temporary registration plate or marker knowingly containing any misstatement of fact, or knowingly to insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration thereof, and the make and motor or serial number of the vehicle for which issued.

(f) If the commissioner finds that the provisions of this section or his directions are not being complied with by a
dealer, he may suspend the right of such dealer to issue temporary registration plates or markers.

(g) Every person who is issued a temporary registration plate or marker shall execute and send an application for an annual registration plate to the department, previous to or not later than fifteen days from the day on which the temporary registration plate or marker is issued to such purchaser.

(h) Every person to whom a temporary registration plate or marker has been issued shall permanently destroy such temporary registration plate or marker immediately upon receiving the annual registration plate for such vehicle from the department: Provided, That if the annual registration plate is not received within forty days of the issuance of the temporary registration plate or marker, the owner shall, notwithstanding the fact that the annual registration plate has not been received, immediately and permanently destroy the temporary registration plate or marker: Provided, however, That not more than one temporary registration plate or marker shall be issued to the same bona fide purchaser for the same vehicle.

(i) A temporary registration plate or marker shall expire and become void upon the receipt of the annual registration plate from the department or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of forty days from the date of issuance, depending upon whichever event shall first occur.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.

Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit, or any license certificate or dealer special plates issued under the provisions of article six of this chapter, is cancelled, suspended or revoked as authorized in this
chapter, the owner, holder or other person in possession of such evidences shall, except as otherwise provided in said article six, immediately return the evidences of the registration, title, permit or license so cancelled, suspended, or revoked, together with any dealer special plates relating to any such license certificate, or any dealer special plate or plates if such alone be suspended, to the department:

Provided, That, the owner or holder shall, before such reinstatement, pay a fee of ten dollars in addition to all other fees, which sum shall be collected by the department and credited to the state road fund to be appropriated to the department for use in enforcement of the provisions of this code. If any person shall willfully fail or refuse to return to the department the evidences of the registration, title, permit or license so cancelled, suspended, or revoked, or any dealer special plates, when obligated so to do as aforesaid, the commissioner shall forthwith notify the superintendent of the department of public safety who shall, as soon as possible, secure possession thereof and return same to the department. Said superintendent of the department of public safety shall make a report in writing to the commissioner, within two weeks after being so notified by the commissioner, as to the result of his efforts to secure the possession and return of such evidences of registration, title, permit or license, or any dealer special plates. For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate, or dealer special plate, which the owner, holder or other person in possession thereof shall have willfully failed or refused, as aforesaid, to return to the department within ten days from the time that such cancellation, suspension or revocation becomes effective, and which shall have been certified to the superintendent of the department of public safety as aforesaid, the owner or holder shall, before the same may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of fifteen dollars, which fee shall be collected by the department of motor vehicles, paid into the state treasury and credited to the general fund to be appropriated to the department of public safety for application in the enforcement of the road laws. A total of twenty-five dollars may be collected on each such reinstatement for each vehicle to which any such cancellation, suspension or revocation relates.
ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

A fee of five dollars shall be paid for a transfer of registration by an owner from one vehicle to another vehicle of the same class or for surrender of registration of one vehicle in exchange for registration of a vehicle of a different class in addition to the payment of any difference in fees as provided in section one, article four of this chapter.

A fee of five dollars shall be paid for the transfer of registration from a deceased person to his legal heir or legatee as provided in section five, article four of this chapter.

A fee of five dollars shall be paid for the issuance of a certificate of title.


A fee of five dollars shall be paid for the issuance of duplicate or substitute registration plates, registration cards or certificates of title.

§17A-10-14. Registration plate for amateur radio station operators.

Any owner of a motor vehicle who is a resident of the state of West Virginia, and who holds an unrevoked and unexpired official amateur radio station license and/or amateur class operators’ license issued by the federal communications commission, upon application, accompanied by proof of ownership of such amateur radio station license, complying with the motor vehicle laws of the state relative to registration and licensing of motor vehicles, and upon payment of the registration, license and other fees required by law, and the payment of the additional special fee herein provided, shall be issued a license plate for a private passenger car, upon which, in lieu of the registration number prescribed by law, shall be inscribed the official amateur radio call letters of
such applicant as assigned by the federal communications commission.

The special fee that shall be charged each applicant for the issuance of a license plate bearing the official amateur radio call letters, in lieu of a registration number, shall be five dollars, which special fee shall be in addition to all other fees required by law. This special fee is for the purpose of compensating the department of motor vehicles for additional costs and services required in the issuing of such licenses.

The commissioner is authorized to prescribe proper forms to be used in making application for the special license plates authorized by this section.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article

2. Issuance of License, Expiration and Renewal.

3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; license fees.

§17B-2-11. Duplicate permits and licenses.

§17B-2-12. Expiration of licenses; renewal fees.

§§17B-2-8. Issuance and contents of licenses; license fees.

On and after the first day of January, one thousand nine hundred eighty-two, the department shall, upon payment of the required fee, issue to every applicant qualifying therefor an operator's or chauffeur's license which license shall contain a coded number assigned to the licensee, the full name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee shall be written with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee. The department shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting,
duplication, reproduction, forging or modification of, or the
superimposition of a photograph on, such license. The color
photograph shall be contained on all licenses issued on and
after the first day of January, one thousand nine hundred
eighty-two, and upon every such license issued under the
provisions of section twelve of this article.

The fee for the issuance of an operator's license shall be ten
dollars. The fee for the issuance of a chauffeur's license shall
be fifteen dollars.

§17B-2-11. Duplicate permits and licenses.

In the event that an instruction permit, operator's license or
chauffeur's license issued under the provisions of this
chapter is lost or destroyed, the person to whom such permit
or license was issued may upon making proper application
and upon payment of a fee of five dollars obtain a duplicate
thereof upon furnishing proof satisfactory to the department
that such permit or license has been lost or destroyed.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

On and after the first day of January, one thousand nine
hundred eighty-two, every operator's license and every
chauffeur's license shall expire four years from the date of its
issuance, except that the operator's or chauffeur's license of
any person in the armed forces shall be extended for a period
of six months from the date the person is separated under
honorable circumstances from active duty in the armed
forces.

A person who allows his operator's or chauffeur's license to
expire may apply to the department for renewal thereof.
Application shall be made upon a form furnished by the
department and shall be accompanied by payment of the fee
required by section eight of this article plus an additional fee
of one dollar and fifty cents. The commissioner shall
determine whether such person qualifies for a renewed
license and may, in his discretion, renew any expired license
without examination of the applicant.

On and after the first day of January, one thousand nine
hundred eighty-two, each renewal of an operator's or
chauffeur's license shall contain a new color photograph of
the licensee. By first class mail to the address last known to
the department, the commissioner shall notify each person
who holds a valid operator's or chauffeur's license of the
expiration date of the license. The notice shall be mailed at
least thirty days prior to the expiration date of the license and
shall include a renewal application form.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

*§17B-3-9. Surrender and return of license; willful refusal to
return; additional fee for reinstatement.

The department upon suspending or revoking a license
shall require that such license shall be surrendered to and be
retained by the department, except that at the end of the
period of suspension such license so surrendered shall be
returned to the licensee: Provided, That, before such license
may be reinstated, the licensee shall pay a fee of ten dollars, in
addition to all other fees and charges, which fee shall be
collected by the department and deposited in the state road
fund to be appropriated to the department for use in the
enforcement of the provisions of this section. If any person
shall willfully fail to return to the department such suspended
or revoked license, the commissioner shall forthwith notify
the superintendent of the department of public safety who
shall, as soon as possible, secure possession thereof and
return same to the department. Said superintendent of the
department of public safety shall make a report in writing to
the commissioner, within two weeks after being so notified
by the commissioner, as to the result of his efforts to secure
the possession and return of such license. For each license
which shall have been suspended or revoked and which the
holder thereof shall have willfully failed to return to the
department within ten days from the time that such
suspension or revocation becomes effective and which shall
have been certified to the superintendent of the department
of public safety as aforesaid, the holder thereof, before the
same may be reinstated, in addition to all other fees and
charges, shall pay a fee of fifteen dollars, which shall be
collected by the department of motor vehicles and paid into
the state treasury and credited to the general fund to be
appropriated to the department of public safety for
application in the enforcement of the road laws.

*Clerks's Note: This section was also amended by S. B. 711-S which, according to the official records in the Office of the Clerk of the House of Delegates, was passed subsequent to the passage of this act.
CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

1 The commissioner shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract shall fully designate the vehicles, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of a violation of any law relating to the operation of a motor vehicle or of any injury or damage caused by such person the commissioner shall so certify. The commissioner shall collect three dollars for each abstract.

CHAPTER 157

(Com. Sub. for S. B. 386—By Mr. Huffman)

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

AN ACT to amend and reenact sections three and seven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter seventeen-d of said code by adding thereto a new article, designated article two-a; and to amend and reenact section one, article six-a, chapter thirty-three of said code, all relating to requirement of minimum level of security for registration and operation of a motor vehicle in this state; application for registration; application contents; presentation of proof of security; penalties for providing false information or proof of security; fee required of applicant; special revolving fund for operation of program; additional grounds for refusing registration or certificate of title; security requirements; types of security permitted; application as to certain vehicles; exceptions; certificate of insurance; obligations of insurer and insured in regard thereto; notice of cancellation or...
nonrenewal of insurance policy; minimum term of such policy; investigation of accident to include inquiry regarding security; notice to department of motor vehicles; suspension, revocation and impoundment of operator's license and/or vehicle registration; notice; hearing; judicial review; reinstatement of license; reissuance of registration; conditions; criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

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

§17A-3-3. Application for registration.

§17A-3-7. Grounds for refusing registration or certificate of title.

§17A-3-3. Application for registration.

1 (a) Every owner of a vehicle subject to registration hereunder shall make application to the department for the registration thereof upon the appropriate form or forms furnished by the department and every such application shall bear the signature of the owner or his authorized agent, written with pen and ink, and said application shall contain:

8 (1) The name, bona fide residence and mailing address of the owner, the county in which he resides, or busi-
ness address of the owner if a firm, association or corporation.

(2) A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(3) In the event a motor vehicle is designated, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if such motor vehicle is to be used alone, or if such motor vehicle is to be used in combination with other vehicles the application for registration of such motor vehicle shall include a statement of the combined declared gross weight of such motor vehicle and the vehicles to be drawn by such motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place thereon; and the application for registration of each such vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles. The declared gross weight stated in the application shall not exceed the permissible gross weight for the axle spacing listed therein as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application shall be subject to the single-axle load limit set forth in chapter seventeen-c of this code.

(4) Each such applicant shall state whether such vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if so used, or to be used, the applicants shall so certify, and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience, or permit from the public service commission.

(5) A statement that liability insurance is in effect
within limits which shall be no less than the require-
ment of section two, article four, chapter seventeen-d
of this code, or that the applicant has qualified as a self-
insurer meeting the requirements of section two, article
six, chapter seventeen-d of the code and that as a self-
insurer he has complied with the minimum security re-
quirements as established in section two, article four, of
said chapter seventeen-d, or that such applicant has
submitted bond or other security approved by the com-
missioner of motor vehicles which shall provide the
equivalent of the policy of insurance herein specified,
or that the applicant has submitted the required cash
or other securities with the state treasurer as set forth
in the provisions of section sixteen, article four, of said
chapter seventeen-d of this code.

The department shall make random periodic checks
of the applications required by this section to enforce
the requirements hereof.

If any person making an application required under
the provision of this section, therein knowingly provides
false information, or if any person knowingly counsels,
advises, aids or abets another in providing false informa-
tion in such application, he is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not more than
one hundred dollars, or be imprisoned in the county jail
for a period not to exceed thirty days, and shall have his
operator's or chauffeur's license and vehicle registration
suspended for a period of six months in addition to either
of the aforesaid penalties.

(6) Such further information as may reasonably be
required by the department to enable it to determine
whether the vehicle is lawfully entitled to registration.

(7) Each such application for registration shall be
accompanied by the fees hereafter provided.

(b) Every applicant for registration of a motor vehicle
under the provisions of this article shall, at the time of
making application for registration required by this sec-
tion, submit the following:
(1) A certificate of insurance obtained by the applicant pursuant to the provisions of section three, article two-a, chapter seventeen-d of the code, or

(2) Proof of other security provided by the applicant pursuant to the provisions of section three, article two-a, chapter seventeen-d of the code, and

(3) A fee of two dollars for each motor vehicle for which the applicant seeks registration, such fee to be deposited in a special revolving fund for the operation by the department of its functions established by the provisions of article two-a, chapter seventeen-d of the code.

Any applicant knowingly submitting false proof of security in making application required by this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or both fined and imprisoned, and in addition to such fine and/or imprisonment, such person shall have his operator's or chauffeur's license and vehicle registration suspended for a period of six months.

§17A-3-7. Grounds for refusing registration or certificate of title.

1 The department shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this chapter;

(2) That the applicant fails to present a certificate of insurance or proof of other security as required pursuant to the provisions of section three of this article;

(3) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;
(4) That the department has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration or the issuance of certificate of title would constitute a fraud against the rightful owner or other person having a valid lien upon such vehicle;

(5) That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

(6) That the required fees have not been paid.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-1. Purpose of article.

§17D-2A-2. Scope of article.


§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

§17D-2A-6. Accident investigators to check for security.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.


§17D-2A-1. Purpose of article.

1 The purpose of this article is to promote the public welfare by requiring every owner or registrant of a motor vehicle licensed in this state to maintain certain security during the registration period for such vehicle.

§17D-2A-2. Scope of article.

1 This article applies to the operation of all motor vehicles required to be registered pursuant to article three, chapter seventeen-a of this code, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.


1 Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain
security as hereinafter provided in effect continuously throughout the registration or licensing period.

Every nonresident owner or registrant of a motor vehicle, which is operated upon any road or highway of this state, and which has been physically present within this state for more than thirty days during the preceding three hundred sixty-five days, shall thereafter maintain security as hereinafter provided in effect continuously throughout the period such motor vehicle remains within this state.

No person shall knowingly drive or operate upon any road or highway in this state any motor vehicle upon which security is required by the provisions of this article unless such security is in effect.

Such security shall be provided by one of the following methods:

(a) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this state within limits which shall be no less than the requirements of section two, article four, and section five, article three, chapter seventeen-cl of this code, or

(b) By any other method approved by the commissioner of the department of motor vehicles of this state as affording security equivalent to that offered by a policy of insurance, including qualification as a self-insurer under the provisions of section two, article six, chapter seventeen-d, or

(c) By depositing with the state treasurer such cash or other securities in the manner set forth in section sixteen, article four, chapter seventeen-d of this code.

The requirements of this section apply to every registered and licensed vehicle upon the next application for renewal of license following the effective date of this section: Provided, That this article shall not apply to any motor vehicle owned by the state or by a political subdivision of this state, nor to any motor vehicle owned by the federal government.

(a) All insurance carriers transacting insurance in this state, shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three of chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the department of motor vehicles shall by rule require all motor vehicles covered and all replacement vehicles of similar classification. The certificate must specify for each vehicle listed therein, that there is a minimum liability insurance coverage not less than the requirements of section two, article four, and section five, article three, chapter seventeen-d of this code.

(b) The certificate of insurance provided pursuant to the provisions of this section shall be submitted to the commissioner of motor vehicles prior to the issuance of any certificate of registration or renewal or registration of any motor vehicle or registration plates pursuant to article three, chapter seventeen-a of this code.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

(a) Cancellation or termination of the insurance policy by the insurance carrier is effective only upon the expiration of thirty days' notice of cancellation, or forty-five days' notice in the case of nonrenewal, to the commissioner of motor vehicles and to the insured.

(b) The commissioner of motor vehicles shall, upon receipt of notice of cancellation or nonrenewal of insurance, as provided in this section, suspend the registration of any motor vehicle for which the insurance policy has been cancelled or renewal of which has been refused, unless the registrant furnishes the commissioner of motor
Provided, That the registrant shall be given notice and afforded an opportunity for hearing and judicial review thereof in accordance with the provisions of subsection (c), section seven of this article.

(c) No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, however, that certain exceptions to such ninety-day requirement may be established under regulations of the commissioner of insurance.

§17D-2A-6. Accident investigators to check for security.

At the time of investigation of a motor vehicle accident in this state by the department of public safety or other law-enforcement agency, the officer of such agency making such investigation shall inquire of the operators of any motor vehicles involved and of the department of motor vehicles as to the existence upon such vehicle or vehicles of the security required by the provisions of this article and upon a finding by such law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any such vehicle, he shall promptly notify the department of motor vehicles of such finding.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is being operated upon the roads or highways of this state, shall have his operator's or chauffeur's license suspended by the commissioner of the department of motor vehicles for a period of ninety days and shall have his motor vehicle registration revoked until such time as he shall present to the department of motor vehicles the proof of security required by this article.

(b) Any person who knowingly operates a motor ve-
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12 hicle upon the roads or highways of this state, which does
13 not have the security required by the provisions of this
14 article, shall have his operator's or chauffeur's license
15 suspended by the commissioner of the department of
16 motor vehicles for a period of ninety days.
17
18 (c) No person shall have his operator's or chauffeur's
19 license or motor vehicle registration suspended or re-
20 voked under any provisions of this section unless he shall
21 first be given written notice of such suspension or revocation
22 sent by certified mail, at least fifteen days prior to
23 the effective date of such suspension or revocation, and
24 upon such person's written request, sent by certified mail,
25 he shall be afforded an opportunity for a hearing there-
26 upon as well as a stay of the commissioner's order of
27 suspension or revocation and an opportunity for judicial
28 review of such hearing as set forth in the provisions of
29 section fifteen, article three, chapter seventeen-d of this
30 code. Upon affirmation of the commissioner's order, the
31 owner or operator, as the case may be, shall surrender
32 such revoked license and/or registration or have the same
33 impounded in the manner set forth in the provisions of
34 section seven, article nine, chapter seventeen-a of the
35 code.
36
37 (d) Such suspended operator's or chauffeur's license
38 shall be reinstated following the period of suspension
39 upon compliance with the conditions set forth in this
40 article and such revoked motor vehicle registration shall
41 be reissued only upon lawful compliance with the pro-
42 visions of this article.


1 The commissioners of the departments of motor vehicles
2 and insurance are hereby authorized to promulgate such
3 rules and regulations, in accordance with chapter twenty-
4 nine-a of this code, as each deems necessary for the ad-
5 ministration, operation and enforcement of the provisions
6 of this article.


1 In addition to any other penalty provided for violation
of any provision of this article, any person who violates any provision of this article is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than ten days nor more than one year, or both fined and imprisoned.

The arrest procedures authorized in section four, article nineteen, chapter seventeen-c of this code shall apply to the enforcement of the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the following specified 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 including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code regarding consent for chemical test for intoxication; 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 alcohol or of any controlled substance or while having an alcohol concentration in his blood of ten one hundredths of one percent (.10) or more by weight;
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 third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses. Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel.
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CHAPTER 158

(Com. Sub. for H. B. 1379—By Mr. Shingleton)

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

AN ACT to amend and reenact section fifteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liens upon the titles to motor vehicles and the length of such liens; length of liens on mobile homes; refiling.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

1 The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided in this article shall be valid for a period of ten years only from the date of such filing, unless the lien or encumbrance is refiled in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance shall be valid for successive additional periods of two years from the date of each such refiling: Provided, That in the case of a mobile home, the filing of any lien or encumbrance and its recordation upon the face of a certificate of title to such mobile home shall be valid for a period of fifteen years from the date of such filing.

13 When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the commissioner of motor vehicles shall not be required to maintain a lien index as to such certificate of title.
AN ACT to repeal sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c; to amend and reenact sections seven and eight, article two; and sections five, eight and nine, article three, chapter seventeen-b; to amend and reenact section two, article five, and to further amend said article by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; to amend and reenact sections one, two and three, article five-a, chapter seventeen-c; to further amend said article by adding thereto a new section, designated section four; to amend article six, chapter sixty by adding thereto a new section, designated section twenty-four, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving a motor vehicle under the influence of alcohol, controlled substances or drugs generally; requiring that applicants for a license to operate a motor vehicle shall be tested on their knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle while under the influence of alcohol; prescribing the form and content of a license to operate a motor vehicle and requiring licenses to be marked so as to indicate past violations resulting in suspension; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; placing limitations on the period of suspension; providing for the surrender and return of licenses and the willful refusal to return a license and fees in connection therewith; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor; providing for implied consent to blood alcohol tests and the administration of such tests; defining the term “law-enforcement officer”; prescribing how preliminary breath analysis to be administered and how the results thereof are to be used; describing how blood tests are administered, and granting immunities to persons administering tests; permitting persons to refuse to take tests.
upon being warned of penalties for refusal; providing administrative penalties for refusal and allowing right to hearing before suspension; setting forth hearing procedure; providing for judicial review of suspension based on refusal to submit to tests; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting person arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; providing for implied consent to administrative procedures dealing with suspension and revocation of licenses; allowing temporary suspension and subsequent revocation of license; setting forth hearing procedures; defining the scope of the hearing; providing for findings to be made prior to revocation of license; providing for order of suspension and judicial review of the same; establishing a safety and treatment program for persons violating article; providing a procedure for reissuance of revoked license; requiring commissioner to report prior offenses to police officer submitting report of violations; establishing penalties to be imposed on officer or commissioner for failure to file affidavits or mail reports within time periods prescribed; requirement for posting informational sign in establishments selling alcoholic beverages or nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c be repealed; that sections seven and eight, article two, and sections five, eight and nine, article three, chapter seventeen-b be amended and reenacted; that section two, article five, chapter seventeen-c be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; that sections one, two and three, article five-a, chapter seventeen-c be amended and reenacted; that said article be further amended by adding thereto a new section, designated section four; and that article six, chapter sixty be amended by adding thereto a new section, designated section twenty-four, all to read as follows:

Chapter

17B. Motor Vehicle Operator's and Chauffeur's Licenses.
17C. Traffic Regulations and Laws of the Road.
60. State Control of Alcoholic Liquors.
CHAPTER 17B. MOTOR VEHICLE OPERATOR'S AND CHAUFFEUR'S LICENSES.

Article
2. Issuance of License, Expiration and Renewal.
3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7. Examination of applicants.
§17B-2-8. Issuance and contents of licenses; license fees.

§17B-2-7. Examination of applicants.

1. (a) Upon the exhibiting by the applicant under the age of eighteen years, of his or her birth certificate, or a certified copy thereof, as evidence that the applicant is of lawful age, the department of public safety shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, his knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and such further physical and mental examination as the department of motor vehicles deems necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

18. (b) The commissioner shall adopt and promulgate regulations concerning the examination of applicants for licenses and the qualifications required of such applicants, and the examination of such applicants by the department of public safety shall be in accordance with such regulations. Such regulations shall provide for the viewing of educational material or films on the effects of alcohol upon persons and the dangers of driving a motor vehicle while under the influence of alcohol.

*§17B-2-8. Issuance and contents of licenses; license fees.

1. On and after the first day of January, one thousand nine
hundred eighty-two, the department shall, upon payment of
the required fee, issue to every applicant qualifying therefor
an operator's or chauffeur's license which license shall
contain a coded number assigned to the licensee, the full
name, date of birth, residence address, a brief description and
a color photograph of the licensee and either a facsimile of the
signature of the licensee or a space upon which the signature
of the licensee shall be written with pen and ink immediately
upon receipt of the license. No license shall be valid until it
has been so signed by the licensee. The department shall use
such process or processes in the issuance of licenses that will,
insofar as possible, prevent any alteration, counterfeiting,
duplication, reproduction, forging, or modification of, or the
superimposition of a photograph on, such license. The color
photograph shall be contained on all licenses issued on and
after the first day of January, one thousand nine hundred
eighty-two, and upon every such license issued under the
provisions of section twelve of this article.

The fee for the issuance of an operator's license shall be ten
dollars. The fee for the issuance of a chauffeur's license shall
be fifteen dollars.

The department of motor vehicles shall mark any license
which is reissued following a suspension of a person's license
to operate a motor vehicle in this state with the type of
violation for which the original license was suspended and
shall indicate the date of the violation. For purposes of this
section, any conviction under the provisions of subsections
(a) and (b) of the prior enactment of section two, article five,
chapter seventeen-c of this code which offense was
committed within a period of five years immediately
preceding the effective date of the present section two, article
five, chapter seventeen-c, shall be treated as a violation to
which this section is applicable and suspensions based on
such convictions shall be marked on licenses which are
hereafter reissued.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.
§17B-3-5. Grounds for mandatory revocation of license by department.
§17B-3-8. Period of suspension or revocation.
§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for
reinstatement.
§17B-3-5. Grounds for mandatory revocation of license by department.

1 The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

5 (1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

7 (2) Any felony in the commission of which a motor vehicle is used;

9 (3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another;

13 (4) Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

17 (5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;

20 (6) Nothing herein shall prohibit the department from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state as provided in chapter seventeen-c of this code.

§17B-3-8. Period of suspension or revocation.

1 The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year, except as provided in chapter seventeen-c of this code.

*§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

1 The department upon suspending or revoking a license shall require that such license shall be surrendered to and be

* Clerk's Note: This section was also amended by S. B. 654 which, according to the official records in the Office of the Clerk of the House of Delegates, was passed prior to the passage of this act.
3 retained by the department, except that at the end of the
4 period of suspension such license so surrendered shall be
5 returned to the licensee: Provided, That, before such license
6 may be reinstated, the licensee shall pay a fee of fifteen
dollars, in addition to all other fees and charges, which fee
8 shall be collected by the department and deposited in a
9 special revolving fund to be appropriated to the department
10 for use in the enforcement of the provisions of this section. If
11 any person shall willfully fail to return to the department
12 such suspended or revoked license, the commissioner shall
13 forthwith notify the superintendent of the department of
14 public safety who shall, without delay, secure possession
15 thereof and return same to the department. Said
16 superintendent of the department of public safety shall make
17 a report in writing to the commissioner, within two weeks
18 after being so notified by the commissioner, as to the result of
19 his efforts to secure the possession and return of such license.
20 For each license which shall have been suspended or revoked
21 and which the holder thereof shall have willfully failed to
22 return to the department within ten days from the time that
23 such suspension or revocation becomes effective and which
24 shall have been certified to the superintendent of the
25 department of public safety as aforesaid, the holder thereof,
26 before the same may be reinstated, in addition to all other fees
27 and charges, shall pay a fee of fifteen dollars, which shall be
28 collected by the department of motor vehicles and paid into
29 the state treasury and credited to the general fund to be
30 appropriated to the department of public safety for
31 application in the enforcement of the road laws.

CHAPTER 17C. TRAFFIC REGULATIONS AND
LAWS OF THE ROAD.

Article
5. Serious Traffic Offenses.
5A. Administrative Procedures for Suspension and Revocation of Licenses for
Driving under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.
§17C-5-2. Driving under influence of alcohol, controlled substances or drugs;
penalties.
§17C-5-2a. Phrases synonymous with driving under the influence of alcohol;
validation of warrants and indictments.
§17C-5-4. Implied consent to test; administration at direction of law-enforcement
officer; designation of type of test; definition of law-enforcement
officer.
§17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.

§17C-5-6. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

§17C-5-7. Refusal to submit to tests; suspension of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing procedures; judicial review.

§17C-5-8. Interpretation and use of chemical test.

§17C-5-9. Right to demand test.

§17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who, while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, drives a vehicle in this state, and when so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, if such act or failure be committed in reckless disregard of the safety of others, and if the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one nor more than three years and shall be fined not less than one thousand dollars.

(b) Any person who, while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, drives a vehicle in this state, and when so driving does any act forbidden by law or neglects any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes the death of any person within one year next following such act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not less than ninety days nor more than one year and shall be
31 fined not less than five hundred dollars nor more than one
32 thousand dollars.

33 (c) Any person who, while under the influence of alcohol,
34 or under the influence of any controlled substance, or under
35 the influence of any other drug to a degree which renders him
36 incapable of safely driving, or under the combined influence
37 of alcohol and any controlled substance or any other drug to a
38 degree which renders him incapable of safely driving, drives
39 a vehicle in this state, and when so driving does any act
40 forbidden by law or neglects any duty imposed by law in the
41 driving of such vehicle, which act or neglect proximately
42 causes bodily injury to any person other than himself, shall be
43 guilty of a misdemeanor, and, upon conviction thereof, shall
44 be confined in the county jail for a period of not less than one
45 day nor more than one year, which jail term shall include
46 actual confinement of not less than twenty-four hours, and
47 shall be fined not less than two hundred dollars nor more
48 than one thousand dollars.

49 (d) Any person who, while under the influence of alcohol,
50 or under the influence of any controlled substance, or under
51 the influence of any other drug to a degree which renders him
52 incapable of safely driving, or under the combined influence
53 of alcohol and any controlled substance or any other drug to a
54 degree which renders him incapable of safely driving, drives
55 a vehicle in this state, shall be guilty of a misdemeanor, and,
56 upon conviction thereof, shall be confined in the county jail
57 for a period of not less than one day nor more than six
58 months, which jail term shall include actual confinement of
59 not less than twenty-four hours, and shall be fined not less
60 than one hundred dollars nor more than five hundred dollars.

61 (e) Any person who, being an habitual user of narcotic
62 drugs or amphetamine or any derivative thereof, drives a
63 vehicle in this state, shall be guilty of a misdemeanor, and,
64 upon conviction thereof, shall be confined in the county jail
65 for not more than six months.

66 (f) Any person who knowingly permits his vehicle to be
67 driven in this state by any other person who is under the
68 influence of alcohol, or under the influence of any controlled
69 substance, or under the influence of any other drug to a
70 degree which renders him incapable of safely driving, or
under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, or is an habitual user of narcotic drugs or amphetamine or any derivative thereof shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person violating any provision of subsection (b), (c), (d), (e) or (f) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than six months nor more than one year.

(h) A person violating any provision of subsection (b), (c), (d), (e) or (f) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years.

(i) For purposes of subsections (g) and (h) of this section relating to second, third and subsequent offenses, any conviction under the provisions of subsections (a) or (b) of the prior enactment of this section which occurred within a period of five years immediately preceding the effective date of this section, shall be regarded as convictions under subsections (d) or (f) of this section.

(j) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d) or (e) of this section.

(k) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(l) The sentences provided herein upon conviction of a violation of this article are mandatory and shall not be subject to suspension or probation, except that the court may provide for community service, or work release alternatives, or weekends or part-time confinements.
§17C-5-2a. Phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

1 (a) When used in this code, the terms or phrases “driving under the influence of intoxicating liquor,” “driving or operating a motor vehicle while intoxicated,” “for any person who is under the influence of intoxicating liquor to drive any vehicle,” or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase “while under the influence of alcohol . . . drives a vehicle” as the latter term or phrase is used in section two of this article.

2 (b) From and after the effective date of this section, a warrant or indictment which charges or alleges the offense prohibited by the provisions of section two of this article and which warrant or indictment uses any of the terms or phrases set forth in subsection (a) of this section shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle upon the public streets or highways of this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a preliminary breath analysis and a secondary chemical test of either his blood, breath or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a police officer has reasonable cause to believe a person to have been driving a motor vehicle upon the public streets and highways while under the influence of alcohol, controlled substances or drugs as prohibited by section two of this article. A secondary test of blood, breath or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public streets or highways while under the influence of alcohol, controlled substances or drugs as prohibited by section two of this article. The
law-enforcement agency by which such law-enforcement
officer is employed shall designate which one of the aforesaid
secondary tests shall be administered: Provided, That if the
test so designated is a blood test and the person so arrested
refuses to submit to such blood test, then the
law-enforcement officer making such arrest shall designate in
lieu thereof, either a breath or urine test be administered, and
notwithstanding the provisions of section seven of this
article, such refusal to submit to a blood test only shall not
result in the suspension of the arrested person's license to
operate a motor vehicle in this state. Any person to whom a
preliminary breath test is administered who is then arrested
shall be told that his refusal to submit to the secondary test
finally designated as provided in this section, will result in the
suspension of his license to operate a motor vehicle in this
state for a period of one year.

For the purposes of this article the term "law-enforcement
officer" shall mean and be limited to (1) any member of the
department of public safety of this state, (2) any sheriff and
any deputy sheriff of any county, and (3) any member of a
municipal police department in any Class I, Class II or Class
III city, as cities are classified in section three, article one,
chapter eight of this code. If any Class I, Class II or Class III
city does not have available to its law-enforcement officers
the testing equipment or facilities necessary to conduct any
secondary test which a law-enforcement officer may
administer under this article, any member of the department
of public safety, the sheriff of the county wherein the arrest is
made or any deputy of such sheriff, may, upon the request of
such arresting law-enforcement officer and in his presence,
conduct such secondary test and the results of such test may
be used in evidence to the same extent and in the same
manner as if such test had been conducted by such arresting
law-enforcement officer. Only the person actually
administering or conducting such test shall be competent to
testify as to the results and the veracity of such test.

§17C-5-5. Preliminary analysis of breath to determine alcoholic
content of blood.

When a police officer has reason to believe a person to have
been driving a motor vehicle upon the public streets and
highways of this state while under the influence of alcohol,
controlled substances or drugs, the police officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the police officer has a reasonable belief that the person has been driving while under the influence of alcohol, controlled substances or drugs. Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the department of health for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, the tests as hereinafter provided in this article shall be administered in accordance with the provisions thereof.

§17C-5-6. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining the alcoholic content thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. The person tested may, at his own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his employment, of his own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him. No person who administers any such test upon the request of a
law-enforcement officer as herein defined, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, shall be in anywise criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

§17C-5-7. Refusal to submit to tests; suspension of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing procedures; judicial review.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to such refusal, the person is given a written statement advising him of the possible criminal and civil penalties for such refusal. The officer shall within twenty-four hours of such refusal, submit to the commissioner of motor vehicles a sworn statement of the officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets and highways of this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the secondary test finally designated in the manner provided in section four of this article and (4) such person was told that his license to operate a motor vehicle in this state would be suspended for a period of one year if he refused to submit to the secondary test finally designated in the manner provided in section four of this article. The commissioner shall make and enter an order suspending such person's license to operate a motor vehicle in this state for a period of one year. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested. No such suspension shall become effective until ten days after receipt of the copy of such order. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn his consent.
for a test of his blood, breath or urine as provided in section
one of this article and the test may be administered although
such person is not told that his failure to submit to the test
will result in the suspension of his license to operate a motor
vehicle in this state for a period of one year.

A suspension hereunder shall run concurrently with the
period of any suspension or revocation imposed in
accordance with other provisions of this code and growing out
of the same incident which gave rise to the arrest for driving a
motor vehicle while under the influence of alcohol, controlled
substances or drugs and the subsequent refusal to undergo
the test finally designated in accordance with the provisions
of section four of this article.

(b) Upon the written request of a person whose license to
operate a motor vehicle in this state has been suspended
under the provisions of subsection (a) of this section, the
commissioner of motor vehicles shall afford the person an
opportunity to be heard. Such written request must be filed
with the commissioner in person or by registered or certified
mail, return receipt requested, within ten days after receipt of
a copy of the order of suspension. The hearing shall be before
said commissioner or authorized deputy or agent of said
commissioner, and all of the pertinent provisions of article
five, chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures in
connection with and following such hearing, with like effect
as if the provisions of said article five were set forth in
extenso in this section, except that in the case of a resident of
this state the hearing shall be held in the county wherein the
person resides unless the commissioner or his authorized
deputy or agent and such person agree that the hearing may
be held in some other county. Any such hearing shall be held
within twenty days after the date upon which the
commissioner received the timely written request therefor,
unless there is a postponement or continuance. The
commissioner may postpone or continue any hearing on his
own motion, or upon application of such person for good
cause shown. For the purpose of conducting such hearing,
the commissioner shall have the power and authority to issue
subpoenas and subpoenas duces tecum in accordance with
the provisions of section one, article five, chapter
twenty-nine-a of this code. All subpoenas and subpoenas
duces tecum shall be issued and served within the time and
for the fees and shall be enforced, as specified in section one,
article five of said chapter twenty-nine-a, and all of the said
section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of a hearing
hereunder.

The scope of such hearing shall be (1) whether the arresting
law-enforcement officer had reasonable grounds to believe
such person had been driving a motor vehicle upon the public
streets or highways of this state while under the influence of
alcohol, controlled substances or drugs, (2) whether such
person was lawfully placed under arrest for the offense of
driving a motor vehicle upon the public streets or highways
of this state while under the influence of alcohol, controlled
substances or drugs, (3) whether such person refused to
submit to the secondary test finally designated in the manner
provided in section four of this article, and (4) whether such
person had been told that his license to operate a motor
vehicle in this state would be suspended for a period of one
year if he refused to submit to the test finally designated in
the manner provided in section four of this article.

After such hearing and consideration of all of the
testimony, evidence and record in the case, the commissioner
shall make and enter an order affirming or rescinding his
erlier order of suspension. The commissioner shall affirm his
erlier order of suspension if he finds that (1) the arresting
law-enforcement officer had reasonable grounds to believe
such person had been driving a motor vehicle upon the public
streets or highways of this state while under the influence of
alcohol, controlled substances or drugs, (2) such person was
lawfully placed under arrest for the offense of driving a motor
vehicle upon the public streets or highways of the state while
under the influence of alcohol, controlled substances or
drugs, (3) such person refused to submit to the test finally
designated in the manner provided in section four of this
article, and (4) such person had been told that his license to
operate a motor vehicle in this state would be suspended for a
period of one year if he refused to submit to the test finally
designated in the manner provided in section four of this
article. If the commissioner finds to the contrary with respect to any one of the above issues, he shall rescind his earlier order of suspension.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. The commissioner shall not stay enforcement of the order; and pending appeal, the court to which such appeal is made, may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a reasonable probability that the appellant shall prevail upon the merits, and that the appellant will suffer irreparable harm if such order is not stayed.

(c) If the commissioner shall after hearing make and enter an order affirming his earlier order of suspension, such person shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section. The judgment of the circuit court shall be final unless reversed on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

§17C-5-8. Interpretation and use of chemical test.

Upon trial for the offense of driving a motor vehicle on the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person while driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his blood, breath or urine, is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following presumptions or have the following effect:
(a) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his blood, shall be prima facie evidence that the person was not under the influence of intoxicating liquor;

(b) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person's blood shall be relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor;

(c) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his blood, shall be admitted as prima facie evidence that the person was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

A chemical analysis of a person's blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subdivisions (a), (b) and (c) of this section, must be performed in accordance with methods and standards approved by the state department of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory, of the criminal identification bureau of the department of public safety.

The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

§17C-5-9. Right to demand test.

Any person lawfully arrested for driving a motor vehicle on the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs who is lawfully arrested as aforesaid by a police officer, shall have the right to demand that a sample or specimen of his blood, breath or urine be taken within two hours from and after the time of arrest, and that a chemical test thereof be made. The
§17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of subsection (a), section two, article five of this chapter, the county having venue of such charge shall pay said fee, and if said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of said county. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay said fee, and if said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of said municipality.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs; temporary suspension of license.

§17C-5A-2. Hearing; revocation; suspension; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-4. Search for record of prior offenses by driver.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs; temporary suspension of license.

(a) Any person who drives a motor vehicle upon the public
MOTOR VEHICLES

streets or highways of this state shall be deemed to have given
his consent by the operation thereof, subject to the provisions
of this article, to the administrative procedure set forth in this
article for the determination of whether his license to operate
a motor vehicle in this state should be revoked or suspended
because he did drive a motor vehicle while under the
influence of alcohol, controlled substances or drugs, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight.

(b) Any law-enforcement officer arresting a person for an
offense described in section two, article five of this chapter
shall report to the commissioner of the department of motor
vehicles by sworn, written statement within twenty-four
hours the name and address of the person so arrested. Such
report shall include the specific offense with which the
person is charged, and, if applicable, a copy of the results of
any secondary tests of blood, breath or urine. The
law-enforcement officer shall certify that such tests were
administered in accordance with the provisions of article five
of this chapter, and that he believes the results to be correct.

(c) If, upon examination of the sworn statement and the
tests results described in subsection (b) of this section, the
commissioner shall determine that a person was arrested for
an offense described in section two, article five of this
chapter, and that the results of the tests indicate that at the
time the test or tests were administered the person had, in his
blood, an alcohol concentration of ten hundredths of one
percent (.10), or more, by weight, or at the time the person was
arrested he was under the influence of a controlled substance
or drug, the commissioner shall make and enter an order
temporarily suspending such person’s license to operate a
motor vehicle in this state. A copy of such order shall be
forwarded to such person by registered or certified mail,
return receipt requested. No suspension shall become
effective until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; suspension; review.

(a) Upon the written request of a person whose license to
operate a motor vehicle in this state has been suspended,
under the provisions of section one of this article, the
commissioner of motor vehicles shall afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of suspension. The hearing shall be before said commissioner or authorized deputy or agent of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply.

(b) Except that in the case of a resident of this state the hearing shall be held in the county wherein the person resides unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county. Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or upon application for each person for good cause shown. For the purpose of conducting such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(c) The principal question at such hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent (.10), or more, by weight.

The commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable
grounds to believe such person to have been driving while
under the influence of alcohol, controlled substances or
drugs, (2) whether such person was lawfully placed under
arrest for an offense involving driving under the influence of
alcohol, controlled substances or drugs, and (3) whether the
tests which were administered were administered in
accordance with the provisions of this article and article five
of this chapter.

(1) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, or under
the influence of any controlled substance, or under the
influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight, the commissioner also finds by a preponderance of
the evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed by law,
which act or failure proximately caused the death of a person
and was committed in reckless disregard of the safety of
others, and if the commissioner further finds that the
influence of alcohol, controlled substances or drugs or the
alcoholic concentration in the blood was a contributing cause
to the death, the commissioner shall revoke the person's
license for a period of ten years: Provided, That if the
commissioner has previously suspended the person's license
under the provisions of this section, the period of revocation
shall be for the life of such person.

(2) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, or under
the influence of any controlled substance, or under the
influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight, the commissioner also finds by a preponderance of
the evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended the person's license under the provisions of this section, the period of revocation shall be for the life of such person.

(3) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent (.10), or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended the person's license under the provisions of this section, the period of revocation shall be ten years.

(4) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent (.10), or more, by weight, or finds that the person, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, did drive a motor vehicle, or finds that the person knowingly permitted his vehicle to be driven by another person who was under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a
degree which rendered him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which rendered him incapable of safely driving, the commissioner shall revoke the person's license for a period of six months: Provided, That if the commissioner has previously suspended the person's license under the provisions of this section, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended the person's license more than once under the provisions of this section, the period of revocation shall be for the life of the person.

(d) For the purpose of this section, a conviction for an offense under subsection (a) or (b) of the prior enactment of section two, article five of this chapter, which offense was committed within five years immediately preceding the effective date of said section two, article five, shall be considered the same as a prior finding of the commissioner under this section.

(e) If the commissioner finds to the contrary with respect to the above issues, he shall rescind his earlier order of suspension or shall reduce the order of revocation to the appropriate period of revocation under this section.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the suspension of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming his earlier order of suspension, such person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code, except that the commissioner shall not stay enforcement of the order; and, pending such appeal, the court may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a reasonable probability that the appellant shall prevail upon the merits, and that the appellant will suffer irreparable harm if such order is not stayed.
§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The department of motor vehicles in cooperation with the department of health, the division of alcoholism and drug abuse, shall establish by rule and regulation, a comprehensive safety and treatment program for persons found in initial and subsequent violations of this article. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train, and rehabilitate the offender.

(b) (1) The department of motor vehicles, in cooperation with the department of health, the division of alcoholism and drug abuse, shall provide for the preparation of an educational and treatment program for each person found in violation of this article, which shall contain the following: (A) A listing and evaluation of the offender's prior traffic record; (B) characteristics and history of alcohol or drug use, if any; (C) his amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of such treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles in cooperation with the department of health, division of alcohol and drug abuse. These fees shall be deposited in a special account administering the program, to be designated the "driver's rehabilitation fund."

(2) The commissioner, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state suspended hereunder, which shall include successful completion of the educational, treatment, or rehabilitation program, subject to the following:

(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until (i) at least thirty days have elapsed from the
(B) When the period of revocation is for a period of years, the license to operate a motor vehicle in this state shall not be reissued until (i) at least one half of such time period has elapsed from the date of the initial suspension, during which time the suspension was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, (iv) the commissioner finds that the offender is not likely to repeat a violation of this article, and (v) there is no unusual and immediate danger to the public if the offender is permitted to drive again.

(C) When the period of revocation is for life, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ten years have elapsed from the date of the initial suspension, during which time the suspension was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, (iv) the commissioner finds that the offender is not likely to repeat a violation of this article, and (v) there is no unusual and immediate danger to the public if the offender is permitted to drive again.

§17C-5A-4. Search for record of prior offenses by driver.

The commissioner shall immediately upon receipt of the affidavits required by section seven, article five of this chapter and section one of this article record the date and time of day of the receipt of such affidavits and shall forthwith cause a search of the appropriate records of the department to be made for any record of prior offenses under this article and such commissioner shall immediately report to the officer making such affidavit an abstract showing any such prior offense, the date thereof, the identity of any court record which any proceedings in regard thereto were instituted and the disposition thereof.
Any police officer who fails to file the affidavits required by this chapter within twenty-four hours of the arrest of any person charged for any violation of article five shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty dollars nor more than five hundred dollars. And if the commissioner shall willfully fail to post by United States mail or other adequate means of communication a written report addressed to the police officer of any such offense, as required by this section, within a period of twenty-four hours after the receipt of the affidavit, the commissioner shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty dollars nor more than five hundred dollars.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-24. Requirement for posting informational sign.

Each store or outlet controlled or operated by the state alcohol beverage control commission, and any store, supermarket, club, restaurant, or other facility selling alcoholic beverages or nonintoxicating beer for either on-premise or off-premise consumption, shall post in an open and prominent place within such establishment a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as follows:
HAS ALCOHOL AFFECTED YOUR DRIVING ABILITY?

The % of alcohol in your blood will tell you. This % can be estimated by—COUNTING YOUR DRINKS (1-drink equalling 1 volume oz. of 100 proof alcohol or 1-12 oz. bottle of beer).

Use Blood-Alcohol Chart below. Under number of DRINKS and opposite Body-Weight find the % of Blood-Alcohol listed.

SUBTRACT from this number the % of alcohol "burned up" during the time elapsed since your first drink.

<table>
<thead>
<tr>
<th>No. Hours Since 1st Drink</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBTRACT</td>
<td>.015%</td>
<td>.030%</td>
<td>.045%</td>
<td>.060%</td>
<td>.075%</td>
<td>.090%</td>
</tr>
</tbody>
</table>

Example—180 lb. man - 8 drinks in 4 hours
.167% minus .060% = .107%

THIS REMAINDER IS AN ESTIMATE of the % of alcohol in your blood.

<table>
<thead>
<tr>
<th>% OF BLOOD-ALCOHOL</th>
<th>INTOXICATED?</th>
<th>IF YOU DRIVE A CAR—</th>
</tr>
</thead>
<tbody>
<tr>
<td>.000 to .050</td>
<td>You Are Not</td>
<td>Take It Easy</td>
</tr>
<tr>
<td>.050 to .100</td>
<td>You Probably Are</td>
<td>Better Not</td>
</tr>
</tbody>
</table>

FOR BEST RESULTS — DON'T DRINK AND DRIVE
# Blood-Alcohol Chart

**Showing Estimated% of Alcohol in the Blood by No. of Drinks in Relation to Body Weight**

<table>
<thead>
<tr>
<th>Drinks</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 lb.</td>
<td>.038</td>
<td>.075</td>
<td>.113</td>
<td>.150</td>
<td>.188</td>
<td>.225</td>
<td>.263</td>
<td>.300</td>
<td>.338</td>
<td>.375</td>
<td>.413</td>
<td>.450</td>
</tr>
<tr>
<td>120 lb.</td>
<td>.031</td>
<td>.063</td>
<td>.094</td>
<td>.125</td>
<td>.156</td>
<td>.188</td>
<td>.219</td>
<td>.250</td>
<td>.281</td>
<td>.313</td>
<td>.344</td>
<td>.375</td>
</tr>
<tr>
<td>140 lb.</td>
<td>.027</td>
<td>.054</td>
<td>.080</td>
<td>.107</td>
<td>.134</td>
<td>.161</td>
<td>.188</td>
<td>.214</td>
<td>.241</td>
<td>.268</td>
<td>.295</td>
<td>.321</td>
</tr>
<tr>
<td>160 lb.</td>
<td>.023</td>
<td>.047</td>
<td>.070</td>
<td>.094</td>
<td>.117</td>
<td>.141</td>
<td>.164</td>
<td>.188</td>
<td>.211</td>
<td>.234</td>
<td>.258</td>
<td>.281</td>
</tr>
<tr>
<td>180 lb.</td>
<td>.021</td>
<td>.042</td>
<td>.063</td>
<td>.083</td>
<td>.104</td>
<td>.125</td>
<td>.146</td>
<td>.167</td>
<td>.188</td>
<td>.208</td>
<td>.229</td>
<td>.250</td>
</tr>
<tr>
<td>200 lb.</td>
<td>.019</td>
<td>.038</td>
<td>.056</td>
<td>.075</td>
<td>.094</td>
<td>.113</td>
<td>.131</td>
<td>.150</td>
<td>.169</td>
<td>.188</td>
<td>.206</td>
<td>.225</td>
</tr>
<tr>
<td>220 lb.</td>
<td>.017</td>
<td>.034</td>
<td>.051</td>
<td>.068</td>
<td>.085</td>
<td>.102</td>
<td>.119</td>
<td>.136</td>
<td>.153</td>
<td>.170</td>
<td>.188</td>
<td>.205</td>
</tr>
<tr>
<td>240 lb.</td>
<td>.016</td>
<td>.031</td>
<td>.047</td>
<td>.063</td>
<td>.078</td>
<td>.094</td>
<td>.109</td>
<td>.125</td>
<td>.141</td>
<td>.156</td>
<td>.172</td>
<td>.188</td>
</tr>
</tbody>
</table>

Traffic Research & Safety Division  
W.Va. Department of Public Safety
The size of display and location of said blood-alcohol chart shall be prescribed by the commissioner, by rule and regulation. Enforcement of the posting provisions of this section shall be carried out by the West Virginia nonintoxicating beer commissioner in establishments which are required to post such notice but are not subject to the supervision of the West Virginia alcohol beverage control commissioner.

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CHAPTER 160

(Com. Sub. for H. B. 917—By Mr. Stephens)

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

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six, relating to required use of approved infant car seats; providing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-46. Child passenger restraining system required.

Every driver who regularly and customarily transports a child under the age of five years in a passenger automobile, van or pickup truck other than one operated for hire, which is registered in this state shall, while such motor vehicle is in motion and operated on a public road, street or highway of this state, provide for the protection of such child by properly placing, maintaining and securing such child in a child passenger restraining system meeting applicable federal motor vehicle safety standards in effect on the effective date of this
section, including without limitation, a car bed or a car seat meeting such standards: Provided, That if such child is between the age of three and five, a seat belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars. Penalties shall not be applied to those drivers who show reasonable proof that they have purchased a child restraint device within thirty days after violation.

A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

CHAPTER 161

(H. B. 931—By Mr. Tompkins)

[Passed April 4, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to adoption of the multistate tax compact; setting forth certain legislative findings; defining terms used in said compact; relating as to such compact to: purposes of this compact, elements of income tax laws including optional three-factor formula for apportionment of net income and a short form tax return; uniform rules for division of income and for such purpose providing for: definitions, allocation of nonbusiness income, apportionment of business income, and other methods of allocation and apportionment; use tax credit for sales tax lawfully paid to another state; recognition of sales tax exemption certificates authorized by another state; creation of the multistate tax commission, its organization and management; representation of political subdivisions of this state; voting by commission members; official
seal; meetings and notice of meetings; election of officers; appointment of executive director; bonding of officers and employees; appointment and discharge of employees of the commission; services of personnel from governmental entities; donations and grants; establishment of offices; bylaws of commission; annual report of commission to governor and Legislature of each member state; committees of the commission; powers of the multistate tax commission; budget and finance; apportionment of commission’s budget to each member state; prohibition against pledging the credit of any member state; books and records; inspection of books and records; promulgation of uniform regulations and forms; interstate audits; subpoena and subpoena duces tecum; confidentiality of audit information; arbitration of disputes concerning apportionment and allocation of income and for such purpose providing for: creation of an arbitration panel, composition of arbitration board, meetings of the board, notice of hearings, powers of the board, expenses of arbitration, determinations of the board and their finality, filing and publishing of determinations, rules of procedure and written compromises; procedure for joining the multistate tax compact and withdrawal therefrom; transition rules on withdrawal of membership; effect of this compact on other laws and jurisdiction of courts; construction and severability of this article; providing for the tax commissioner or an alternate designated by him to represent this state on the commission and representation of political subdivisions of this state; creating the multistate tax compact advisory committee; providing for appropriation of membership dues and audit fees; and establishing effective date and transition rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. MULTISTATE TAX COMPACT.

§11-10A-1. Legislative findings.
§11-10A-4. Purposes.
§11-10A-7. Division of income.
§11-10A-8. Elements of sales and use taxes.
§11-10A-9. Multistate tax commission; organization and management.
§11-10A-10. Committees of the multistate tax commission.
§11-10A-12. Commission funding; books and records.
§11-10A-16. Entry into force and withdrawal.
§11-10A-17. Effect on other laws and jurisdiction.
§11-10A-18. Tax commissioner to represent state.
§11-10A-20. Representation of political subdivisions of this state.
§11-10A-21. Multistate tax compact advisory committee created.
§11-10A-22. Appropriation of dues and audit fees.
§11-10A-23. Effective date; transition rules.

§11-10A-1. Legislative findings.

1 The Legislature hereby finds and declares that the adoption
2 by this state of the multistate compact will (1) simplify the
3 problem which multistate and multinational businesses en-
4 counter in complying with the tax laws of this state, and (2)
5 promote efficiency and uniformity of application in the ad-
6 ministration of the tax laws. The Legislature does therefore
7 declare that this article be construed so as to accomplish
8 the foregoing purposes.

§11-10A-2. Short title; arrangement and classification.

1 This article may be cited as the "multistate tax compact." No
2 inference, implications or presumptions of legislative construc-
3 tion may be drawn on or made by reasons of the location or
4 grouping of any particular section or provision or portion of
5 this article, and no legal effect may be given to any descriptive
6 matter or headings relating to any part, section, subsection or
7 paragraph of this article.


1 The "multistate tax compact" as hereby codified in sections
2 four through seventeen of this article, is hereby approved,
3 ratified and adopted by this state and entered into with all
jurisdictions legally joining therein in the form substantially as
provided in sections four through seventeen of this article.

§11-10A-4. Purposes.

The purposes of this compact are to:

(a) Facilitate proper determination of state and local tax
liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

(b) Promote uniformity or compatibility in significant components of tax systems.

(c) Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

(d) Avoid duplicative taxation.


As used in this article, the terms:

(a) "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

(b) "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

(c) "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

(d) "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales
price, but does not include a tax imposed exclusively on the
sale of a specifically identified commodity or article or class of
commodities or articles.

(e) "State" means a state of the United States, the District
of Columbia, the Commonwealth of Puerto Rico or any
territory or possession of the United States.

(f) "Subdivision" means any governmental unit or special
district of a state.

(g) "Tax" means an income tax capital stock tax, gross
receipts tax, sales tax, use tax and any other tax which has
a multistate impact, except that the provisions of sections six,
seven and eight of this article shall apply only to the taxes
specifically designated therein and the provisions of section
twelve of this compact shall apply only in respect to deter-
minations pursuant to section seven.

(h) "Taxpayer" means any corporation, partnership, firm,
association, governmental unit or agency or person acting as
a business entity in more than one state.

(i) "Use tax" means a nonrecurring tax, other than a sales
tax, which (1) is imposed on or with respect to the exercise or
enjoyment of any right or power over tangible personal prop-
erty incident to the ownership, possession or custody of that
property or the leasing of that property from another in-
cluding any consumption, keeping, retention or other use of
tangible personal property and (2) is complementary to a
sales tax.


(a) Taxpayer option, state and local income taxes.—
Any taxpayer subject to an income tax whose income is
subject to apportionment and allocation for tax purposes
pursuant to the laws of a party state or pursuant to the
laws of subdivisions in two or more party states may elect
to apportion and allocate his income in the manner provided
by the laws of such state or by the laws of such states and
subdivisions without reference to this compact, or may elect
to apportion and allocate in accordance with section seven
of this article. This election for any tax year may be made
in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein section seven is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

(b) *Taxpayer option, short form.*—Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of one hundred thousand dollars may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

(c) *Coverage.*—Nothing in this section relates to the reporting or payment of any tax other than an income tax.

§11-10A-7. Division of income.

(a) *Definitions.*—As used in this section, unless the context otherwise requires:

(1) "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, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company or any type of insurance company.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any business entity (A) which owns or operates any plant, equipment, property, franchise or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery or furnishing of electricity, water or steam; and (B) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(7) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this section.

(8) "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.

(9) "This state" means the state in which the relevant tax return is filed or, in the case of application of this section to the apportionment and allocation of income for local tax
purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(b) Income from multistate activity.—Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this section. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this section, the taxpayer may elect to allocate and apportion his entire net income as provided in this section.

(c) “Taxable in another state” defined.—For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Allocation of nonbusiness income.—Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (1) through (4) of this subsection.

(1) Net rents and royalties.—

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state: (i) if and to the extent that the property is utilized in this state, or (ii) in their entirety if the taxpayer’s commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties
by a fraction, the numerator of which is the number of days
of physical location of the property in the state during the
rental or royalty period in the taxable year and the denomina-
tor of which is the number of days of physical location of the
property everywhere during all rental or royalty periods in the
taxable year. If the physical location of the property during the
rental or royalty period is unknown or unascertainable by the
taxpayer, tangible personal property is utilized in the state in
which the property was located at the time the rental or royalty
payer obtained possession.

(2) Capital gains.—

(A) Capital gains and losses from sales of real property
located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal
property are allocable to this state if (i) the property had a
situs in this state at the time of the sale, or (ii) the taxpayer’s
commercial domicile is in this state and the taxpayer is not
taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible per-
sonal property are allocable to this state if the taxpayer’s com-
nercial domicile is in this state.

(3) Interest.—Interest and dividends are allocable to this
state if the taxpayer’s commercial domicile is in this state.

(4) Patent and copyright royalties.—

(A) Patent and copyright royalties are allocable to this
state: (i) if and to the extent that the patent or copyright is
utilized by the payer in this state, or (ii) if and to the extent
that the patent copyright is utilized by the payer in a state
in which the taxpayer is not taxable and the taxpayer’s com-
mmercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is
employed in production, fabrication, manufacturing or other
processing in the state or to the extent that a patented product
is produced in the state. If the basis of receipts from patent
royalties does not permit allocation to states or if the account-
ing procedures do not reflect states of utilization, the patent
is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(e) Apportionment of business income.—All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(f) Property factor.—The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(g) Value of property.—Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(h) Average value of property.—The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(i) Payroll factor.—The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(j) Compensation.—Compensation is paid in this state if:
(1) The individual’s service is performed entirely within the state;

(2) The individual’s service is performed both within and without the state, but the service performed without the state is incidental to the individual’s service within the state; or

(3) Some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the 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.

(k) Sales factor.—The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(1) Allocation of sales of tangible personal property.—Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(m) Allocation of other sales.—Sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(n) Other methods of allocation and apportionment.—If the allocation and apportionment provisions of this section
do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

§11-10A-8. Elements of sales and use taxes.

(a) Use tax credit.—Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

(b) Sales tax exemption certificates; vendors may rely. —Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sale or use tax with respect to the transaction.

§11-10A-9. Multistate tax commission; organization and management.

(a) General.—The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the type of taxes to which this article applies. If there is more than one such agency the state shall provide by law for the selection of
the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees or other counsel shall receive all notices of meetings required under subsection (e) of this section.

(b) Representation of subdivisions.—Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Voting.—Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) Official seal.—The commission shall adopt an official seal to be used as it may provide.

(e) Meetings and notice of meetings.—The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) Election of officers; appointment of executive director; bonding.—The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bond-
ing of such of its officers and employees as it may deem ap-
propriate.

(g) Employees of commission.—Irrespective of the civil
service, personnel or other merit system laws of any party
state, the executive director shall appoint or discharge such
personnel as may be necessary for the performance of the
functions of the commission and shall fix their duties and
compensation. The commission bylaws shall provide for per-
sonnel policies and programs.

(h) Services of personnel from governmental entities.—
The commission may borrow, accept or contract for the
services of personnel from any state, the United States or any
other governmental entity.

(i) Donations and grants—The commission may accept
for any of its purposes and functions any donations and grants
of money, equipment, supplies, materials and services, con-
ditional or otherwise, from any governmental entity, and may
utilize and dispose of the same.

(j) Offices.—The commission may establish one or more
offices for the transaction of its business.

(k) Bylaws.—The commission shall adopt bylaws for
the conduct of its business. The commission shall publish
its bylaws in convenient form, and shall file a copy of the
bylaws and any amendments thereto with the appropriate
agency or officer in each of the party states.

(l) Annual report to governor and legislature.—The com-
mission annually shall make to the governor and legislature
of each party state a report covering its activities for the
preceding year. Any donation or grant accepted by the com-
mission or services borrowed shall be reported in the annual
report of the commission, and shall include the nature, amount
and conditions, if any, of the donation, gift, grant or services
borrowed and the identity of the donor or lender. The com-
mission may make additional reports as it may deem desirable.

§11-10A-10. Committees of the multistate tax commission.

(a) Executive committee.—To assist in the conduct of its
business when the full commission is not meeting, the com-
mission shall have an executive committee of seven members,
including the chairman, vice chairman, treasurer and four
other members elected annually by the commission. The
executive committee, subject to the provisions of this compact
and consistent with the policies of the commission, shall
function as provided in the bylaws of the commission.

(b) Advisory and technical committees.—The commis-
sion may establish advisory and technical committees,
membership on which may include private persons and pub-
lic officials, in furthering any of its activities. Such
committees may consider any matter of concern to the
commission, including problems of special interest to any
party state and problems dealing with particular types of
taxes.

(c) Additional committees.—The commission may estab-
lish such additional committees as its bylaws may provide.


In addition to powers conferred elsewhere in this compact,
the commission shall have power to:

(a) Study state and local tax systems and particular
types of state and local taxes.

(b) Develop and recommend proposals for an increase in
uniformity or compatibility of state and local tax laws with
a view toward encouraging the simplification and improvement
of state and local tax law administration.

(c) Compile and publish information as in its judgment
would assist the party states in implementation of the com-
 pact and taxpayers in complying with state and local tax
laws.

(d) Do all things necessary and incidental to the ad-
ministration of its functions pursuant to this compact.

§11-10A-12. Commission funding; books and records.

(a) Annual budget.—The commission shall submit to the
governor 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 state for presentation to the legislature thereof.

(b) State's share.—Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) Credit of state not to be pledged.—The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (i), section eight of the article: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (i), section fourteen, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) Books and records.—The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
(e) Inspection of books and records.—The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Audits.—Nothing contained in this section shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.


(a) General.—Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of section seven of this article.

(b) Public hearing.—Prior to the adoption of any regulation, the commission shall:

1. As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

2. Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(c) Adoption by member states.—The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

(a) General.—This article shall be in force only in those party states that specifically provide therefor by statute. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

(b) Attendance of persons.—The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: Provided, That such state has adopted this section.

(c) Subpoena.—The commission may apply to any court of record in West Virginia having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this section and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions
of this subsection apply only to courts in a state that has adopted this section.

(d) *Refusal to perform audit.*—The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable for satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(e) *Confidentiality of audit information.*—Information obtained by any audit pursuant to this section shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this section shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(f) *Cooperative audit.*—Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this section.

(g) *Taxpayers not charged for audit.*—In no event shall the commission make any charge against a taxpayer for an audit.

(h) *Definition of “tax.”*—As used in this section, “tax,” in addition to the meaning ascribed to it in section five, means any tax or license fee imposed in whole or in part for revenue purposes.


(a) *General.*—Whenever the commission finds a need
for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this section in effect, notwithstanding the provisions of this section.

(b) *Arbitration panel.*—The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(c) *Taxpayer request for arbitration.*—Whenever a taxpayer who has elected to employ section six, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of section six, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivision thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

(d) *Composition of arbitration board.*—The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.
(e) **Meeting of board.**—The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(f) **Notice of hearing.**—The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses. The board shall act by majority vote.

(g) **Powers of board.**—The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this section.

(h) **Expense of arbitration.**—Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

(i) **Determinations of board; finality.**—The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board
shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(j) **Filing of determinations**.—The board shall file with the commission and with each tax agency represented in the proceeding: The determination of the board; the board’s written statement of its reasons therefor; the record of the board’s proceedings; and any other documents required by the arbitration rules of the commission to be filed.

(k) **Publishing of determinations**.—The commission shall publish the determinations of boards together with the statements of the reasons therefor.

(l) **Rules of procedure**.—The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(m) **Written compromise**.—Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

§11-10A-16. **Entry into force and withdrawal.**

(a) **General.**—This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(b) **Withdrawal of membership.**—Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(c) **Transition rule on withdrawal of membership.**—No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby
lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

§11-10A-17. Effect on other laws and jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement subsection (b), section six of this article.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: Provided, That the definition of "tax" in subsection (g), section four of this article may apply for the purposes of that section and the commission's powers of study and recommendation pursuant to section eleven of this article may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

§11-10A-18. Tax commissioner to represent state.

The tax commissioner shall represent this state on the multistate tax commission.


The tax commissioner may be represented on the multistate tax commission by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the tax commissioner.

§11-10A-20. Representation of political subdivisions of this state.

The governor, after consultation with representatives of
municipalities having a business and occupation tax, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact. The member of the commission representing this state, and any alternate designated by him, shall consult regularly with these appointees in accordance with subsection (b), section nine of this article.

§11-10A-21. Multistate tax compact advisory committee created.

There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state, any alternate designated by him, the attorney general or his designee, and two members of the Senate, appointed by the president thereof and two members of the House of Delegates, appointed by the speaker thereof. The chairman shall be the member of the commission representing this state. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three times in each year. The committee may consider any matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

§11-10A-22. Appropriation of dues and audit fees.

There shall annually be appropriated in the budget of the tax commissioner, sufficient funds to pay audit fees and the cost of being a member of the multistate tax compact.

§11-10A-23. Effective date; transition rules.

This article shall take effect on the first day of July, one thousand nine hundred eighty-one, and shall apply to all tax years ending after said first day of July. With respect to tax years ending prior to the first day of July, one thousand nine hundred eighty-one, the laws of this state as they existed prior to the effective date of this article shall be preserved and continued as fully and completely as if set forth in extenso herein.
AN ACT to amend and reenact section twelve, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twelve of said chapter, all relating to general powers of municipalities; compensation of officers and employees; and authorizing municipalities to expend municipal revenues for purposes of general employee benefits.

Be it enacted by the Legislature of West Virginia:

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

Article

5. Election, Appointment, Qualification and Compensation of Officers; general provisions relating to Officers and Employees; Elections and Petitions generally; Conflict of Interest.

12. General and Specific Powers, Duties and allied relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits against Municipalities.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-12. Compensation of officers and employees.

Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term.

The governing body of every municipality shall have
8 plenary power and authority to provide by ordinance for the
9 allowance of time off of officers and employees with pay for
10 vacations and illness and for personnel management
11 incentives, as additional consideration for their services and
12 employment.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES
AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS
AGAINST MUNICIPALITIES.

PART III. GENERAL POWERS OF MUNICIPALITIES
AND GOVERNING BOARDS.

§8-12-5. General powers of every municipality and the
governing body thereof.

1 In addition to the powers and authority granted by (i) the
2 constitution of this state, (ii) other provisions of this chapter,
3 (iii) other general law, and (iv) any charter, and to the extent
4 not inconsistent or in conflict with any of the foregoing
5 except a special legislative charter, every municipality and
6 the governing body thereof shall have plenary power and
7 authority therein by ordinance or resolution, as the case may
8 require, and by appropriate action based thereon:
9
10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or vacate,
12 discontinue and close, streets, avenues, roads, alleys, ways,
13 sidewalks, crosswalks, drains and gutters, for the use of the
14 public, and to improve and light the same, and have them
15 kept free from obstructions on or over them which have not
16 been authorized pursuant to the succeeding provisions of this
17 subdivision (1); and, subject to such terms and conditions as
18 the governing body shall prescribe, to permit, without in any
19 way limiting the power and authority granted by the
20 provisions of article sixteen of this chapter, any person to
21 construct and maintain a passageway, building or other
22 structure overhanging or crossing the airspace above a public
23 street, avenue, road, alley, way, sidewalk or crosswalk, but
24 before any such permission for any person to construct and
25 maintain a passageway, building or other structure
26 overhanging or crossing any such airspace is granted, a
27 public hearing thereon shall be held by the governing body
28 after publication of a notice of the date, time, place and
(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality;

(5) To regulate the width of sidewalks on the streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;
(9) To control and administer the waterfront and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, wastes, ashes, trash and other similar matters;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or under his control to be kept or used as a
(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have plenary power and authority, and it shall be the duty of its governing body, to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;
(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or willfully depriving of necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters, and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, an electric system, a waterworks system, or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in said articles nineteen and twenty), within or without the corporate limits of the municipality, or partly within and partly without the corporate limits of the municipality, except that the municipality shall not erect any such system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed, and where such system is by the municipality erected, or has heretofore been so
erected, partly within and partly without the corporate limits of the municipality, the municipality shall have the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality, and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets, and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots, or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use, and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and
control of the West Virginia board of health and state
department of health;

(41) To establish, construct, acquire, maintain and operate
hospitals, sanitaria and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise,
land within or near the corporate limits of the municipality
for providing and maintaining proper places for the burial of
the dead and to maintain and operate the same and regulate
interments therein upon such terms and conditions as to
price and otherwise as may be determined by the governing
body, and, in order to carry into effect such authority the
governing body may acquire any cemetery or cemeteries
already established;

(43) To exercise general police jurisdiction over any
territory without the corporate limits owned by the
municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety,
health, welfare and good order;

(45) To adopt rules for the transaction of business and the
government and regulation of its governing body;

(46) Except as otherwise provided, to require and take
such bonds from such officers, when deemed necessary,
payable to the municipality, in its corporate name, with such
sureties and in such penalty as the governing body may see
fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from such employees and
contractors such bonds in such penalty, with such sureties
and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern
to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate
such instrumentalities, other than free public schools, for the
instruction, enlightenment, improvement, entertainment,
recreation and welfare of the municipality's inhabitants as the
governing body may deem necessary or appropriate for the
public interest;

(50) To create, maintain and operate a system for the
enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or such classes thereof as may be deemed advisable;

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund, which shall not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which shall be set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs, and to expend moneys from such fund for such purposes; and

(56) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter, and chapter sixty-one of this code for like offenses and violations.

CHAPTER 163
(H. B. 1331—By Mr. Farley)

[Passed April 10, 1911; in effect July 1, 1911. Approved by the Governor.]

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine-
d, article three, chapter sixty of said code, all relating to raising

tax on purchases of intoxicating liquors in municipalities to
five percent of purchase price; and relating to raising tax on
purchases of intoxicating liquors outside corporate limits of
municipalities from three to five percent of the purchase price.

Be it enacted by the Legislature of West Virginia:

That section seven, article thirteen, chapter eight of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted; and that section nine-d, article three,
chapter sixty of said code be amended and reenacted, to read as
follows:

Chapter

8. Municipal Law, Municipalities and Counties; Intergovern-
mental Relations.

60. State Control of Alcoholic Liquors.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND
COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 13. TAXATION AND FINANCE.

*§8-13-7. Tax on purchases of intoxicating liquors in municipali-
ties; private club fees.

1 Every municipality shall have plenary power and authority
to levy and collect a tax upon all purchases within such
municipality of intoxicating liquors from the alcohol beverage
control commissioner or from any person licensed to sell wine
at retail to the public under the provisions of article eight,
chapter sixty of this code: Provided, That no municipality
shall have authority to levy or collect any such tax on the
intoxicating liquors sold by or purchased from holders of a
license issued under the provisions of article seven, chapter
sixty of this code. The tax shall be levied upon the purchaser
and shall be added to and collected with the price of purchase.
The tax shall not exceed five percent of the purchase price.

13 A copy of any ordinance imposing the tax authorized by
this section shall be certified by the mayor of the municipality

*Clerk's Note: This section was also amended by H. B. 1111. now Chapter 217, which
was passed March 26, 1981.
to the West Virginia alcohol beverage control commissioner
and to the tax commissioner. The West Virginia alcohol bev-
erage control commissioner by appropriate rules and regulations
shall provide for the collection of such tax upon all purchases
within such municipality of intoxicating liquors from the alco-
hol beverage control commissioner or from any person licensed
to sell wine at retail pursuant to the provisions of chapter sixty
of this code and for distribution thereof to the respective
municipalities for which the same shall be collected. Such
rules and regulations shall provide that all such taxes shall
be deposited with the state treasurer and distributed quarterly
by the treasurer upon warrants of the auditor payable to the
municipality.

Every municipality shall have plenary power and authority
to levy and collect a fee from any private club licensee whose
premises are situate therein as authorized in section seven,
article seven, chapter sixty of this code.

CHAPTER 60. STATE CONTROL
OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

*§60-3-9d. Tax on purchases of intoxicating liquors outside corpor-
orate limits of municipalities.

For the purpose of providing financial assistance to and
for the use and benefit of the various counties and municipal-
ities of this state, there is hereby levied a tax upon all purchases
outside the corporate limits of any municipality of intoxicating
liquor from state stores or other agencies of the alcohol bever-
age control commissioner and of wine from any person licensed
to sell wine at retail under the provisions of article eight,
chapter sixty of this code. The tax shall be five percent of
the purchase price and shall be added to and collected with
the purchase price by the commissioner or by the person so
licensed to sell wine: Provided, That no such tax shall be
collected on the intoxicating liquors sold by or purchased
from holders of a license issued under the provisions of article
seven of this chapter.

*Clerk's Note: This section was also amended by H. B. 1111 (Chapter 217), which was
passed on March 26, 1981; and by H. B. 935 (Chapter 218), which was passed on March 5,
1981.
All such tax collected within one mile of the corporate limits of any municipality within the state shall be remitted to such municipality; all other tax so collected shall be remitted to the county wherein collected: Provided, That where the corporate limits of more than one municipality be within one mile of the place of collection of such tax, all such tax collected shall be divided equally among each of said municipalities: Provided, however, That such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.

The West Virginia alcohol beverage control commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases outside the corporate limits of any municipality of intoxicating liquor from state stores or other agencies of the alcohol beverage control commissioner, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. The tax commissioner by appropriate rules and regulations shall provide for the collection of such tax upon all purchases outside the corporate limits of any municipality of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the counties and municipalities.

CHAPTER 164

(H. B. 1467—By Mr. Schifano)

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

AN ACT to amend and reenact section one, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section three, article two-c, chapter thirteen of said code, all relating to expanding the definitions of “municipal public works” and “commercial project” for the purposes of revenue bond financing and industrial and commercial development bond financing to include farms, housing for students and faculty at institutions of higher education; and facilities providing housing for the elderly.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

13. Public Bonded Indebtedness.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.

1. As used in this article, the terms “municipal public works” or “works” or “projects” shall be construed to mean and include the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, landfill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, floodwalls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor
vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, re-paving, surfacing, resurfacing, curbing, recurring, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where such works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall mean and include any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


Unless the context clearly indicates otherwise, as used in this article:

(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and
includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) “County commission” means the governmental body created by section 22, article VIII of the West Virginia Constitution.

(c) “Governmental body” means the county commission, a town or city council or any other governing body in lieu thereof.

(d) “Industrial project” means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(e) “Industrial pollution” means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any natural resources which pollute the land, water or air of this state.
AN ACT to amend and reenact sections five and seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal retirement benefits; raising from fifty to sixty the maximum age of eligibility to join the system; providing that the age of retirement be seventy instead of sixty-five; and requiring that an employee have at least ten years continuous service with the city for eligibility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-5. Employees eligible for participation in fund.


§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

1. Appointive members of administrative boards and commissions, except employees of such boards and commissions;
2. Individuals employed under contract for a definite period or for the performance of a particular or special service;
3. Employees serving on a part-time basis of less than one-half time;

(a) After the effective date of the fund, any member of the fund who has at least ten years of continuous total service credit shall receive a vested right to a retirement pension which he may exercise upon or after attainment of age sixty. When he has attained the age of sixty years he may, at his option, apply for a retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (d) of this section.

(b) Retirement for all members of the fund shall be compulsory at the age of seventy subject to the following conditions: The employee may be permitted to continue in the service if he so desires and if his services are still valuable to the city. Whether an employee's services are valuable at the age of seventy shall be determined by the appointing officer of the city. If he determines that such services are valuable, his determination must be certified to the board for approval. If the board approves, the employee may continue in the service of the city. The appointing officer shall annually certify to the board relative to the ability and competency of all employees over age seventy. The amount of any pension under the provisions of this subsection shall be determined in
accordance with the provisions of subsection (d) of this section.

(c) Although he has not attained the age of sixty, any member who has thirty-five years' total service and who becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies shall be entitled to an annual retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (d) of this section.

(d) A member of the fund, upon retirement, shall be entitled to the following annual retirement pension, payable in twelve monthly installments:

For thirty-five years of total service credit to and including twenty-four years of total service credit, fifty percent of average salary plus one and two-thirds percent of average salary per year of service for each year above twenty-three years;

For twenty-three years of total service credit, fifty percent of average salary: Provided, That if a member has twenty-three years of total service credit he shall be entitled to a minimum retirement pension of one hundred dollars per month;

For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;

For seventeen years of total service credit, forty-one percent of average salary;

For sixteen years of total service credit, thirty-nine percent of average salary;
For fifteen years of total service credit, thirty-six percent of average salary;

For fourteen years of total service credit, thirty-three percent of average salary;

For thirteen years of total service credit, thirty-one percent of average salary;

For twelve years of total service credit, twenty-nine percent of average salary;

For eleven years of total service credit, twenty-seven percent of average salary; and

For ten years of continuous total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(e) With the condition that no optional benefit shall be effective if the member dies within thirty days after the effective date of his retirement, such member may elect at least one year prior to such effective date of his retirement to receive a lesser retirement pension, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one half of his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life as he shall have named in a written designation duly acknowledged and filed with the board.

(f) A member who has attained the age of sixty years and who has less than ten years’ total service credit shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation account at the time of his retirement.
AN ACT to amend and reenact section nine, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to death benefits for municipal employees under pension and relief funds; naming a beneficiary other than a spouse.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


1 (a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

1 (1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed one hundred and twenty-five dollars per month. In the event there be no surviving spouse, or if remarriage occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member's final monthly salary, subject to
a total payment to all such children of fifty percent of such
final monthly salary, or one hundred twenty-five dollars per
month, whichever is the lesser. If there be no surviving spouse
or children under age eighteen, the deceased member's de-
pendent father or mother or both, the question of dependency
to be determined by the board, shall each be entitled until
death to a monthly payment equal to one sixth of the
deceased member's final monthly salary, but the payment to
either parent shall not exceed fifty dollars per month.

(2) If the member died from any cause other than that
stated in subdivision (1) of this subsection, and such member
at the date of his death had ten or more years' total service
credit, his beneficiary or beneficiaries shall be entitled, for
a period not to exceed ten years, to death benefits in ac-
cordance with the retirement pension table contained in
section seven of this article. The death benefits shall be
paid to such individual or individuals having an insurable
interest in the member's life as such member shall have
ominated in a designation filed with the board. As to any
spouse beneficiary, the marriage must have occurred at least
one year prior to the death of the member in order that the
spouse may be eligible for benefits under this subdivision (2).

(b) If a member receiving a retirement pension under the
provisions of section seven of this article at the date of his
death dies with a spouse or beneficiary surviving (concerning
which retirement pension the optional benefit provisions
set forth in subsection (e) of said section seven are not
applicable), and such member had been receiving such re-
tirement pension for less than ten years, such surviving
spouse or beneficiary shall be entitled to receive death bene-
fits equivalent to the deceased member's retirement pension
for the remaining period of ten years dating from the date
of the member's retirement. The death benefits shall be paid
to such individual or individuals having an insurable interest
in the member's life as such member shall have nominated
in a designation filed with the board; but a surviving
spouse shall not be entitled to death benefits under the
provisions of this subsection unless such surviving spouse was
married to the member before the date of his retirement and
such marriage took place at least one year prior to the date
of the death of the member. If the surviving spouse re-
marries, such spouse’s death benefits shall be terminated and
shall not be resumed upon subsequent change in the marital
status of such spouse.

(c) If a member dies with less than ten years’ total
service credit so that he was not entitled to a retirement
pension during life, the member’s total contributions to the
fund, without interest, shall be returned to such individual
or individuals having an insurable interest in the member’s
life as such member shall have nominated in a designation
filed with the board, and in the absence of any such designa-
tion, to the member’s estate.

CHAPTER 167
(Com. Sub. for H. B. 1679—By Mr. Farley and Mr. Goff)

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

AN ACT to repeal section twenty, article twenty-two, chapter eight
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to arrest fees collected for municipal
departments’ pension and relief funds and to enact in lieu thereof
a new section twenty of said article, relating to minimum stan-
dards for actuarial soundness; to amend and reenact sections six-
ten, seventeen, nineteen, twenty-one, twenty-two, twenty-four,
twenty-five, twenty-six, twenty-seven and twenty-eight of said
article; to further amend said article by adding thereto two new
sections, designated sections nineteen-a and twenty-three-a, to
amend and reenact section eleven, article fourteen of said chap-
ter eight; to amend and reenact section sixteen, article fifteen
of said chapter eight, to further amend said article fifteen by
adding thereto two new sections, designated sections eight-a and
eight-b; to amend and reenact section two, article six, chapter
twelve of said code; to amend article three, chapter thirty-three
of said code by adding thereto a new section, designated sec-
tion fourteen-d, and to amend article twelve, chapter thirty-three of said code by adding thereto a new section, designated section sixteen-a, all relating to policemen's and firemen's pension and relief funds; requiring all applicants for positions in a paid police department or a paid fire department to meet certain medical requirements; providing eligibility requirements for volunteer fire departments to receive funds from the municipal pensions and protection fund and priorities for their spending of such funds; defining certain terms; declaring the board of trustees of policemen's and firemen's pension and relief funds as fiduciaries of such funds; providing a new method of funding policemen's and firemen's pension and relief funds to begin at a designated time including an allocable portion of the municipal pensions and protection fund and increased contributions by members; requiring repayment to the respective funds by a member wishing to rejoin; providing minimum standards for actuarial soundness; requiring the treasurer of the funds to keep necessary data and to act as a fiduciary for the funds; allowing the funds to be invested in the state consolidated fund or the consolidated pension fund; setting eligibility standards for total and temporary, and total and permanent, disability pensions; providing the amount of such disability pensions; making certain adjustments to computing retirement pensions and death benefits; limiting credit for absence from service and military service; levying additional fire and casualty insurance premium taxes for the municipal pensions and protection fund and providing a method of allocating moneys in such fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.


33. Insurance.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

14. Law and Order; Police Force or Departments; Powers, Authority and
Duties of Law-Enforcement Officials and Policemen; Police Matrons;
Special School Zone and Parking Lot or Parking Building Police
Officers; Civil Service for Certain Police Departments.

15. Fire Fighting; Fire Companies and Departments; Civil Service for
Paid Fire Departments.

22. Retirement Benefits Generally; Policemen’s Pension and Relief Fund;
Firemen’s Pension and Relief Fund; Pension Plans for Employees
of Waterworks System, Sewerage System or Combined Waterworks
and Sewerage System.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF
LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND
PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DE­
PARTMENTS.

§8-14-11. Rules and regulations for all examinations; probationary
appointments.

1 The policemen’s civil service commission in each Class I
2 and Class II city shall make rules and regulations providing
3 for both competitive and medical examinations for appoint-
4 ments and promotions to all positions in the paid police de-
5 partment in such city, and for such other matters as are nec-
necessary to carry out the purposes of the civil service provisions of this article. Any such commission shall have the power and authority to require by rules and regulations a physical fitness examination as a part of its competitive examination or as a part of its medical examination: Provided, That after the thirtieth day of June, one thousand nine hundred eighty-one, the medical requirements for appointment to all positions in the paid police department in such city shall include, but not be limited to, the medical requirements stated in section sixteen, article twenty-two of this chapter. Due notice of the contents of all such rules and regulations and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and said rules and regulations and any modifications thereof shall also be printed for public distribution. All original appointments to any positions in a paid police department subject to the civil service provisions of this article shall be for a probationary period of one year: Provided, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty of this article. If, at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the service shall be equivalent to his final appointment.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8a. Eligibility for allocation from municipal pensions and protection fund.

§8-15-8b. Priorities for expenditures of revenues from the municipal pensions and protection fund.


§8-15-8a. Eligibility for allocation from municipal pensions and protection fund.

In order to be eligible to receive revenues allocated from the municipal pensions and protection fund, each volunteer or part volunteer fire company or department must meet the requirements listed in subsections (a) through (c) of this section.
Each volunteer or part volunteer fire company or department must:

(a) Submit and maintain current submission of fire loss data to the state fire marshal, including verification via notary public, if no fire loss has occurred;

(b) Complete or be in the process of receiving firefighters training, including section one of the West Virginia University fire service extension or its equivalent. Such fire company or department must have at least ten members certified having completed such training or if a volunteer fire company or department has twenty or fewer members, fifty percent of the active volunteer members must have completed such training; and

(c) Comply with all applicable federal and state laws.

§8-15-8b. Priorities for expenditures of revenues from the municipal pensions and protection fund.

Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the priority items listed in subsections (a) through (d) of this section. Such expenditures may be made for the following:

(a) Personal protective equipment, including protective headgear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;

(b) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(c) Compliance with insurance service office recommendations relating to fire departments; and

(d) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund may be used for capital improvements, retirement of debts or equipment for personal vehicles owned or operated by volunteer fire company or department members.


The firemen's civil service commission in each municipality
shall make rules and regulations providing for both competitive
and medical examinations for appointments and promotions to
all positions in the paid fire department in such municipality,
and for such other matters as are necessary to carry out the
purposes of the civil service provisions of this article. Any
such commission shall have the power and authority to require
by rules and regulations a physical fitness examination as a
part of its competitive examination or as a part of its medical
examination: Provided, That after the thirtieth day of June, one
thousand nine hundred eighty-one, the medical require-
ments for appointment to all positions in the paid fire depart-
ment in such municipality shall include, but not be limited to,
the medical requirements stated in section sixteen, article
twenty-two of this chapter. Due notice of the contents of such
rules and regulations and of any modifications thereof shall
be given, by mail, in due season, to the appointing officer; and
said rules and regulations and any modifications thereof shall
also be printed for public distribution. All original appoint-
ments to any positions in a paid fire department subject to the
civil service provisions of this article shall be for a probationary
period of six months: Provided, That at any time during the
probationary period the probationer may be discharged for
just cause, in the manner provided in section twenty-five of
this article. If, at the close of this probationary term, the con-
duct or capacity of the probationer has not been satisfactory
to the appointing officer, the probationer shall be notified, in
writing, that he will not receive absolute appointment, whereup-
on his employment shall cease; otherwise, his retention in the
service shall be equivalent to his final appointment.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S
PENSION AND RELIEF FUND; FIREMEN'S PENSION
AND RELIEF FUND; PENSION PLANS FOR EM-
PLOYEES OF WATERWORKS SYSTEM, SEWERAGE
SYSTEM OR COMBINED WATERWORKS AND SEW-
ERAGE SYSTEM.

PART III. POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of
boards of trustees; definitions; continuance of funds.

§8-22-17. Powers and duties of boards of trustees.
§8-22-19. Levy to maintain fund.
§8-22-19a. Refunds of member contributions.
§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.
§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions.
§8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

In every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund, and for a firemen's pension and relief fund, for the purposes hereinafter enumerated, and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and sections seventeen through twenty-eight of this article, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean any such department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.
Unless and until other provision is made by subsequent legislative action, any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former article six of this chapter or this article twenty-two shall be or remain mandatory and shall be governed by the provisions of sections sixteen through twenty-eight of this article twenty-two (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city), and shall not be affected by the transition from one class of municipal corporation to a lower class as specified in section three, article one of this chapter: Provided, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city shall not be required to establish such pension and relief fund if said town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

After the thirtieth day of June, one thousand nine hundred eighty-one, for the purposes of sections sixteen through twenty-eight of this article the word "member" means any paid police officer or firefighter who at time of appointment to such paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001—Firefighters Professional Qualifications '74 as updated from year to year: Provided, That any police officer or firefighter who was a member of such fund prior to the first day of July, one thousand nine hundred eighty-one, shall be considered a member after June thirtieth, one thousand nine hundred eighty-one.

For purposes of sections sixteen through twenty-eight of this article the words "salary or compensation" means remuneration actually received by a member: Provided, That the remuneration received by such member during any twelve-consecutive-month period utilized in determining benefits which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by such member in the two consecutive twelve-consecutive-month periods immediately preceding such twelve-consecutive-month period utilized in determining benefits shall be disregarded: Provided,
however, That the "average adjusted salary" means the arithmetic average of each year's adjusted salary such adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second twelve-consecutive-month period preceding such twelve-consecutive-month period utilized in determining benefits, "year-two" means the twelve-consecutive-month period immediately preceding such twelve-consecutive-month period utilized in determining benefits, and "year-three" means the twelve-consecutive-month period utilized in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary"; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.

§8-22-17. Powers and duties of boards of trustees.

Such board of trustees, or boards of trustees, shall be public corporations by the name and style of "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)," or "The Board of Trustees of the Firemen's Pension and Relief Fund of (name of municipality)," as the case may be, by which names they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property for the use of said policemen's pension and relief fund or said firemen's pension and relief fund and have and use a common seal. In the absence of such a seal, the seal of the president of any such corporation shall be equivalent to such common seal. Any such board of trustees may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of said board.

After the thirtieth day of June, one thousand nine hundred
eighty-one, any such board of trustees, boards of trustees and
any members thereof shall, as fund fiduciaries, discharge their
duties with respect to such pension and relief funds solely in
the interest of the members and members' beneficiaries for the
exclusive purpose of providing benefits to members and their
beneficiaries and defraying reasonable expenses of adminis-
tering the fund.

§8-22-19. Levy to maintain fund.

(a) The provisions of this subsection shall remain in effect
through the thirtieth day of June, one thousand nine hundred
eighty-three.

In every municipality in which there is a policemen's pension
and relief fund or a firemen's pension and relief fund, or both,
the same shall be maintained as follows: The governing body
of the municipality shall levy annually and in the manner pro­
vided by law for other municipal levies, and include within the
maximum levy or levies permitted by law, and if necessary in
excess of any charter provision, a tax at such rate as will, after
crediting the amount of the contributions received during
such year from the members of the respective paid police de­
partment or paid fire department, provide funds equal to the
sum of (1) the full amount of estimated expenditures of the
boards of trustees of the respective funds, and (2) an additional
amount equal to ten percent of such estimated expenditures,
said ten percent amount to be taken, accumulated and invested,
if possible, as surplus reserve: Provided, That in no event shall
such levy for each of the respective boards of trustees be less
than one cent nor more than eight cents on each one hundred
dollars of all real and personal property as listed for taxation
in such municipality: Provided, however, That in the event that
the funds derived above are not sufficient to meet the annual
expenditures and the surplus reserve funds for any fiscal year
do not contain a sufficient balance to maintain full retirement
benefits for that fiscal year, the municipality shall for only
that fiscal year levy an amount not to exceed an additional two
cents on each one hundred dollars of all real and personal
property listed for taxation in such municipality: Provided
further, That in the event that a municipality is required to
levy an amount for any fiscal year in excess of eight cents on each one hundred dollars of all real and personal property as provided above, the municipality shall assess and collect for only that fiscal year from each member an additional amount of one percent of the actual salary or compensation for each one cent that the municipality has levied in excess of the eight cents which shall become a required part of the pension and relief fund to which the member belongs.

The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any such fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of six percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman.

(b) (1) After the thirtieth day of June, one thousand nine hundred eighty-three: In order for a municipal policemen's or firemen's pension and relief fund to receive the allocable portion of moneys from the municipal pensions and protection fund established in section fourteen-d, article three, chapter thirty-three of this code, the governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or
levies permitted by law, and if necessary in excess of any chart-
er provision, a tax at such rate as will, after crediting (A) the
amount of the contributions received during such year from
the members of the respective paid police department or paid
fire department and (B) the allocable portion of the municipal
pensions and protection fund established in section fourteen-d,
article three, chapter thirty-three of this code provide funds
equal to the amount necessary to meet the minimum stand-
ards for actuarial soundness as provided in section twenty of
this article, said amount to be irrevocably contributed, accu-
mulated and invested as fund assets described in sections
twenty-one and twenty-two of this article. Such municipality
contributions shall be deposited as such fund assets on at least
a quarterly basis and any revenues received from any source by
a municipality which are specifically collected for the purpose
of allocation for deposit into such fund shall be so deposited
within thirty days of receipt by the municipality. Such hereto-
fore surplus reserves accumulated before the first day of July,
one thousand nine hundred eighty-three, shall be irrevocably
contributed, aggregated and invested as fund assets described
in sections twenty-one and twenty-two of this article. Any ac-
tuarial deficiency arising under this section and section twenty
of this article shall not be the obligation of the state of West
Virginia.

(2) The levies authorized under the provisions of this section,
or any part of them, may by the governing body be laid in addi-
tion to all other municipal levies, and to that extent, beyond the
limit of levy imposed by the charter of such municipality; and
such levies shall supersede and if necessary exclude levies for
other purposes, where such other purposes have not already
attained priority, and within the limitations upon taxes or tax
levies imposed by the constitution and laws.

(3) Such public corporations are authorized to take by gift,
grant, devise or bequest any money or real or personal prop-
erty, upon such terms as to the investment and expenditures
thereof as may be fixed by the grantor or determined by said
trustees.

(4) In addition to all other sums provided for pensions in this
section, it shall be the duty of every municipality in which any
such fund or funds have been or shall be established to as-
and collect from each member of the paid police depart-
ment or paid fire department or both each month, the sum of
seven percent of the actual salary or compensation of such
member; and the amount so collected shall become a regular
part of the policemen’s pension and relief fund, if collected
from a policeman, and of the firemen’s pension and relief fund,
if collected from a fireman. Such member contributions shall
be deposited in such pension and relief fund on at least a
monthly basis.

(5) For the fiscal year beginning on the first day of July, one
thousand nine hundred eighty-three and for each fiscal year
thereafter, the state treasurer shall retain the allocable portion
of the municipal pensions and protection fund, established in
section fourteen-d, article three, chapter thirty-three of this
code, until such time as the treasurer of the municipality ap-
plies for such allocable portion and certifies in writing to the
state auditor that:

(A) The municipality has irrevocably contributed the amount
required under this section and section twenty of this article
to such pension and relief fund for the fiscal year; and

(B) The board of trustees of such pension and relief fund
has made a report to the governing body of the municipality
on the condition of its fund with respect to the fiscal year.

(6) When the aforementioned application and certification
are made the allocable portion of moneys from the municipal
pensions and protection fund shall be paid to the correspond-
ing policemen’s or firemen’s pension and relief fund.

(7) The state auditor has the power and duty as he deems
necessary to perform or review audits on such pension and re-
lief funds or to employ an independent consulting actuary or
accountant to determine the compliance of the aforementioned
certification with the requirements of this section and section
twenty of this article. The expense of such audit or determina-
tion shall be paid from the portion of the municipal pensions
and protection fund allocable to municipal policemen’s and
firemen’s pension and relief funds. If such allocable portion of
the municipal pensions and protection fund is not paid to such
pension and relief fund within thirty-six months, such portion is forfeited by such pension and relief fund and is allocable to other eligible municipal policemen's and firemen's pension and relief funds in accordance with section fourteen-d, article three, chapter thirty-three of this code.

§8-22-19a. Refunds of member contributions.

Any member of a paid police or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his connection with said department, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest. Any member who receives such refund and such member subsequently wishes to reenter the department, such police officer or firefighter shall not be allowed to reenter the department unless such police officer or firefighter repays to the pension and relief fund all sums refunded to him in a lump sum at the date of reentry or by monthly payroll deductions within thirty-six months from the date he reenters the department with interest at the rate of eight percent per annum. In the event such refund is made prior to the first day of January, one thousand nine hundred eighty-one, and such member subsequently reenters the department such police officer or firefighter shall be allowed membership in such pension and relief fund; however, no credit may be allowed such member for any former service, unless such member repays to the pension and relief fund all sums refunded to him within one year from the date he reenters the department with interest at the rate of eight percent per annum: Provided, That any member who, on or before June three, one thousand nine hundred fifty-five, reentered the paid police or fire department shall be allowed credit for any former service in the same department reentered if he, within one year from said June three, one thousand nine hundred fifty-five, repaid all sums withdrawn or refunded to him with interest at the rate of six percent per annum, but for such member who receives such refund prior to the first day of January, one thousand nine hundred eighty, interest may not be charged for more than three years. Any probationary member of a paid police or fire department who is not given an
absolute appointment at the end of his probationary period
shall, upon request, be refunded all pension and relief fund
deductions made from his salary or compensation, but without
interest. Any member contribution made in fiscal years be-
ginning on the first day of July, one thousand nine hundred
eighty-one, and thereafter by any members of such fund, which
is in excess of the percentages, required in section nineteen of
this article of such member’s salary or compensation as defined
in section sixteen of this article shall be refunded with eight per-
cent interest to such member upon completion of the calcu-
lation of his retirement benefit.


The board of trustees for each pension and relief fund shall
have regularly scheduled actuarial valuation reports prepared
by a qualified actuary. All of the following standards must
be met:

(a) An actuarial valuation report shall be prepared at least
once every three years commencing with the later of (1) the
first day of July, one thousand nine hundred eighty-three, or
(2) three years following the most recently prepared actuarial
valuation report: Provided, That this most recently prepared
actuarial valuation report meets all of the standards of this
section.

(b) The actuarial valuation report shall consist of, but is
not limited to, the following disclosures: (1) the financial ob-
jective of the fund and how the objective is to be attained, (2)
the progress being made toward realization of the financial
objective, (3) recent changes in the nature of the fund, benefits
provided, or actuarial assumptions or methods, (4) the fre-
quency of actuarial valuation reports and the date of the most
recent actuarial valuation report, (5) the method used to value
fund assets, (6) the extent to which the qualified actuary relies
on the data provided and whether the data was certified by the
fund’s auditor or examined by the qualified actuary for reas-
onableness, (7) a description and explanation of the actuarial
assumptions and methods, and (8) any other information the
qualified actuary feels is necessary or would be useful in fully
and fairly disclosing the actuarial condition of the fund.
(c) After the thirtieth day of June, one thousand nine hundred eighty-three, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the state premium tax fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period not more than forty years: Provided, That for those funds in existence on the first day of June, one thousand nine hundred eighty-one, its actuarial deficiency, if any, shall not be amortized over a period longer than that which remains under its current schedule. For purposes of determining this minimum financial objective, (1) the value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value, and (2) all costs, deficiencies, rate of interest, and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund. If as a result of this legislation a municipality's financial commitment to the fund is materially increased, the municipality may elect to phase in this increase over the five fiscal years commencing the first day of June, one thousand nine hundred eighty-three.

(d) For purposes of this section the term "qualified actuary" means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his duties with respect to a fund solely in the interest of the members and member's beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his opinion the technique and assumptions used are reasonable and meet the requirements of this section of this article.
66. (e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.


The treasurer of the municipality shall be the custodian of all of the assets of the policemen's pension and relief fund and firemen's pension and relief fund, and shall deposit and pay out the moneys thereof upon, and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a good and financially responsible surety company authorized to do business in this state, as surety for such fund or funds. The treasurer of the municipality shall as a fund fiduciary, discharge his duties with respect to such pension and relief fund solely in the interest of the members and members' beneficiaries for the exclusive purpose of providing benefits to such members and their beneficiaries and defraying reasonable expenses of administering the fund. Such fund or funds shall be trust funds and shall not be used for any other purpose than provided herein. Such treasurer shall keep in convenient form such data as may be necessary for an actuarial valuation report of such fund and for checking the actuarial experience of such fund.

§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.

The board of trustees may invest a portion or all of the fund assets in the consolidated fund or the consolidated pension fund. The board of trustees shall invest any moneys received by it and not invested in the consolidated fund or the consolidated pension fund in the following classes of securities and accounts and not otherwise, which securities and accounts mature on such dates as will make available such amount of cash as is required:

(a) Obligations of the United States or any agency thereof, which are guaranteed by the United States or for which the full faith and credit of the United States is pledged for the payment of principal and interest, or any obligation of an
agency of the United States designated in section nine, article six, chapter twelve of this code.

(b) Certificates of deposit secured by (1) obligations as listed in subdivision (a) of this section, (2) general obligation or revenue bonds of the state of West Virginia, (3) general obligation bonds of any other state, (4) general obligation bonds of any county in this state or of any county board of education in this state, or (5) general obligation bonds of any municipality in this state.

(c) Interest bearing savings accounts or certificates of deposit in banking institutions, the accounts of which are insured by the federal deposit insurance corporation, or interest bearing savings accounts in federal savings and loan associations, the accounts of which are insured by the federal savings and loan insurance corporation, or interest bearing savings accounts in building and loan associations, the accounts of which are insured by the federal savings and loan insurance corporation: Provided, That an investment in any such savings account in excess of the amount thereof which would be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, as the case may be, shall not be made unless such banking institution, federal savings and loan association or building and loan association provides adequate bond or other adequate security for the amount of the proposed municipal investment in excess of such insurance coverage, the adequacy of any such bond or other security to be determined by the treasurer of such municipality.

(d) Any security that is secured by a first lien deed of trust or mortgage on real property situate within this state: Provided, That the value of the securing of first lien deed of trust or mortgage shall be at least twice the amount loaned thereon, based on a sound appraisal by a competent appraiser and duly certified by him or federally insured: Provided, however, That the interest for such loan of money at a rate expressed in terms of dollars upon one hundred dollars for a year, shall be not less than the monthly index of long-term government bonds yields for the second preceding calendar
month plus an additional one percent a year rounded off to the nearest quarter of one percent a year.

Any investment made under this article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions.

(a) All members applying for total and temporary or total and permanent disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, shall be examined by at least two physicians under the direction of the staff at Marshall University, West Virginia University, Morgantown or West Virginia University, Charleston: Provided, That if such member's medical condition cannot be agreed upon by two such physicians, a third physician shall examine such member. Such medical examination shall include the review of such member's medical history. The expense of the member's transportation to such medical examination and the expense of the medical examination shall be paid by the board of trustees, such medical expense shall not exceed the reasonable and customary charges for such services.

(b) Effective for members becoming eligible for total and temporary disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, initially or previously under this subsection allowance for initial or additional total and temporary disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to such member during such disability for a period not exceeding twenty-six weeks if after a medical examination in accordance with subsection (a) of this section of this article, two examining physicians report in writing to the board of trustees that (1) such member has become so totally, physically or mentally disabled, from any reason, as to render such member totally, physically or mentally, incapa-
(2) it has not been determined if such disability is permanent or it has been determined that such disability may be alleviated or eliminated if such member follows a reasonable medical treatment plan or reasonable medical advice: Provided, That in any event a member is not eligible for total and temporary disability payments following the fourth consecutive twenty-six week period of total and temporary disability unless such subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During such two-year period of such total and temporary disability, such department is required to restore such member to his former position in such department at any time he is determined to no longer be disabled: Provided, That the department may refill, on a temporary basis, the position vacated by such member after the first twenty-six weeks of his temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after the thirtieth day of June, one thousand nine hundred eighty-one, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to such member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that such member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his duties in such department, as to render such member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if such member has been a member of either of such departments for a period of not less than five consecutive years preceding such disability, such member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his duties in such department, as to render such member totally, physically or mentally, and per-
manently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if such member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during such disability for not exceeding twenty-six weeks shall cease at the end of such twenty-six week period under the following conditions:

1. Such member fails to be examined as provided in subsection (a) of this section or
2. Such member is examined or reexamined as provided in subsection (a) and two examining physicians report to the board of trustees that such member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, under subsection (b) of this section, subsequent to such member's receipt of total and temporary disability payments for a period of two years, such payments shall cease at the end of such two-year period under the following conditions:

A. Such member fails to be examined as provided in subsection (a) of this section or
B. Such member is examined or reexamined as provided in subsection (a) and two examining physicians report to the board of trustees that such member's medical condition does not meet the requirements of subsection (c) of this section.


(a) The monthly sum to be paid to each member eligible for disability, prior to the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-four of this article or, after the thirtieth day of June, one thousand nine hundred eighty-one, under the pro-
visions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary or compensation being received by such member, at the time he is so disabled, or the sum of two hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of the section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workmen's compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability. Lump sum payments of state workmen's compensation benefits shall not be considered for purposes of this subsection unless such lump sum payments represented commuted values of monthly state workmen's compensation benefits.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three
periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the sixty percent authorized in said subsection (a), receive one additional percent, to be added to the sixty percent, per each year served in excess of said twenty years, up to a maximum of ten additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article and who retires prior to the first day of July, one thousand nine hundred eighty-one, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department shall have reached the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixty-fifth birthday; and the mayor shall cause such sixty-five-year-old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection (d), such member shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such
three periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater, and if such member has been employed in said department for more than twenty years, the provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or fire department at the time a fund is hereafter established to furnish the necessary proof of his date of birth to the said board of trustees, as specified in section twenty-three of this article, within a reasonable length of time, said length of time to be determined by the said board of trustees; and then the board of trustees and the mayor shall proceed to act in the manner provided in subsection (d) of this section and shall cause all members of the paid police or fire department who are over the age of sixty-five years to be retired in not less than sixty days from the date the fund is established. Upon retirement under the provisions of this subsection (e), such member, whether he has been employed in said department for twenty years or not, shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater, and if such member has been employed in said department for more than twenty years, the provisions of subsection (b) of this section shall apply.


(a) In case:

(1) Any member of a paid police or fire department who
has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension under the provisions of, prior to the first day of July, one thousand nine hundred eighty-one, section twenty-four of this article or, after the thirtieth day of June, one thousand nine hundred eighty-one, section twenty-three-a and twenty-four of this article or a retirement pension under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, leaving in either case surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(2) Any former member of any such department who is on a disability pension prior to the first day of July, one thousand nine hundred eighty-one, under section twenty-four of this article, or after the thirtieth day of June, one thousand nine hundred eighty-one, under sections twenty-three-a and twenty-four of this article, or is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b), section twenty-five of this article, shall die from any cause other than as specified in subsection (b) of this section leaving in either case surviving a dependent spouse to whom the marriage took place prior to the date of such member’s retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member’s retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1) and (2) the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits viz.: To such dependent spouse, until death or remarriage, a sum per month equal to thirty percent of such member’s average monthly salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three
42 periods beginning with the same calendar month of different
43 years and all such three periods falling within the member's
44 final five years of employment with such department, in which
45 such member received his highest salary or compensation while
46 a member of the department, hereinafter for convenience re-
47ferred to in this section as “monthly average,” or an amount of
48 one hundred dollars per month, whichever shall be greater; to
49 each such dependent child a sum per month equal to ten per-
50 cent of such monthly average, or the sum of thirty dollars per
51 month for each such child, whichever shall be greater, until
52 such child shall attain the age of eighteen years or marry,
53 whichever first occurs; to each such dependent orphaned child
54 a sum per month equal to fifteen percent of such monthly
55 average, or the sum of forty-five dollars per month for each
56 such child, whichever shall be greater, until such child shall
57 attain the age of eighteen years or marry, whichever first oc-
58 occurs; to each such dependent father or mother a sum per
59 month for each equal to ten percent of such monthly average,
60 or the sum of thirty dollars per month for each such father
61 and mother, whichever shall be greater; to each such depen-
62dent brother or sister the sum of five dollars per month until
63 such individual shall attain the age of eighteen years or marry,
64 whichever first occurs but in no event shall the aggregate
65 amount paid to such brothers and sisters exceed thirty dollars
66 per month; but if at any time, because of the number of de-
67pendents, all such dependents cannot be paid in full as herein
68 provided, then each dependent shall receive his pro rata share
69 of such payments: Provided, That in no case shall the payments
to the surviving spouse and children be cut below sixty-five
70 percent of the total amount to be paid to all dependents.

(b) The dependent spouse, child or children, or dependent
73 father or mother, or dependent brothers or sisters, of any such
74 member who shall die by reason of service rendered in the
75 performance of such member’s duties shall, regardless of the
76 length of such member’s service and irrespective of whether
77 such member was or was not entitled to receive or was or
78 was not receiving disability pension or temporary disability
79 payments at the time of his death, receive the death benefits
80 provided for in subsection (a) of this section, and if such mem-
ber had less than three years’ service at the time of his death, the monthly average shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, his contributions to the fund plus interest shall be refunded to his named beneficiary or, if no beneficiary has been named, to his estate to the extent that such contributions plus interest exceed any disability or retirement benefits that he may have received before his death.

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.


(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces which unit is called into active duty for one year or more or a member of the West Virginia national guard or air national guard, or who enlists in one of the armed forces of the United States during
hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointed municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such pension benefits:

(1) A former member who on June thirtieth, one thousand nine hundred sixty-two, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits but on and after July one, one thousand nine hundred seventy-one, such pension benefits shall be in the amount of two hundred dollars per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive pension benefits but on and after July one, one thousand nine hundred seventy-one, shall receive the disability pension benefits or retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and
relief fund or firemen's pension and relief fund, on the
effective date of this article, the following provisions shall
govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent
father or mother, or dependent brothers or sisters, of any
former member, who on June thirty, one thousand nine
hundred sixty-two, was receiving any death benefits from a
policemen's pension and relief fund or firemen's pension and
relief fund, shall continue to receive death benefits but on
and after July one, one thousand nine hundred seventy-one,
such death benefits shall be in the following amounts: To a
dependent spouse, until death or remarriage, the sum of one
hundred dollars per month; to each dependent child the sum
of thirty dollars per month, until such child shall attain
the age of eighteen years or marry, whichever first occurs;
to each dependent orphaned child the sum of forty-five
dollars per month, until such child shall attain the age of
eighteen years or marry, whichever first occurs; to each
dependent father and mother the sum of thirty dollars per
month for each; to each dependent brother or sister the sum
of five dollars per month, until such individual shall attain
the age of eighteen years or marry, whichever first occurs,
but in no event shall the aggregate amount paid to such
brothers and sisters exceed thirty dollars per month; but
if at any time, because of the number of dependents, all
such dependents cannot be paid in full as herein provided,
then each dependent shall receive his pro rata share of such
payments: Provided, That in no case shall the payments to
the surviving spouse and children be cut below sixty-five
percent of the total amount to be paid to all dependents;

(2) A dependent spouse, child or children, or dependent
father or mother, or dependent brothers or sisters, of any
former member, who became eligible for death benefits on
or after July one, one thousand nine hundred sixty-two, shall
continue to receive death benefits but on and after July
one, one thousand nine hundred seventy-one, shall receive
the death benefits provided for in section twenty-six of this
article.

(d) A former member who is receiving disability pension
benefits on the thirtieth day of June, one thousand nine
hundred eighty-one, shall continue to receive disability pension
benefits provided for in section twenty-four of this article.

§8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

Until the expiration of three years from the time of the
creation of any such fund, unless otherwise authorized by
ordinance of the municipality, no payment shall be made to
any member or beneficiary except from the income arising
from said fund; and if at any time prior to the first day of
July, one thousand nine hundred eighty-one, there shall not
be sufficient money to the credit of said pension and relief
fund to pay each member and beneficiary entitled to the
benefits thereof the full amount per month, as herein pro-
vided, then an equal percentage of such monthly payments
shall be made to each member and beneficiary thereof, until
the earlier of (a) the first day of July, one thousand nine
hundred eighty-three, and (b) such time when said fund is
so replenished as to warrant payment in full to each of such
members and beneficiaries.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

*§12-6-2. Definitions.

As used in this article, unless a different meaning clearly ap-
pears from the context:

(1) "Board" means the West Virginia state board of in-
vestments;

(2) "Consolidated fund" means the investment fund
managed by the board and established pursuant to subsection
(b), section eight of this article;

(3) "Consolidated pension fund" means the investment
fund managed by the board and established pursuant to
subsection (a), section eight of this article;

(4) "Local government account" means the account within

*Clerk’s Note: This section was also amended by S. B. 574, now Chapter 135, which
was passed on April 10, 1981.
the consolidated fund established pursuant to subsection (b),
section eight of this article;

(5) "Local government funds" means the moneys of a
political subdivision, including policemen’s pension and rel-
ief funds and firemen’s pension and relief funds, transferred to
the board for deposit in the local government account;

(6) "Pension funds" means and includes the workmen’s
compensation fund; the state teachers retirement system
funds; the death, disability and retirement fund for members
of the department of public safety; the public employees re-
tirement system funds; the judges retirement fund; policemen’s
pension and relief funds; firemen’s pension and relief fund; and
such other retirement or pension funds and systems as may
be hereafter established on behalf of public employees of the
state or of its political subdivisions and administered by the
state;

(7) "Securities" means all bonds, notes, debentures or
other evidences of indebtedness, and shall not mean corporate
stock;

(8) "State account" means the account within the con-
solidated fund established pursuant to subsection (b), section
eight of this article; and

(9) "State funds" means all moneys of the state which
may be lawfully invested except (a) the pension funds (as de-
dined in subdivision (6) of this section) and (b) the “school
fund” established by section four, article XII of the state con-
stitution.

CHAPTER 33. INSURANCE.

Article
3. Licensing, Fees and Taxation of Insurers.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax;
allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for
municipal policemen’s and firemen’s pension and relief funds
and additional revenue for volunteer and part volunteer fire
companies and departments, there is hereby levied and im-
posed, on and after the first day of January, one thousand nine
hundred eighty-two, an additional premium tax equal to one
percent of gross direct premiums collected, less premiums re-
turned to policyholders because of cancellation of policies, for
fire insurance and casualty insurance policies. Except as other-
wise provided in this section, all provisions of this article
relating to the levy, imposition and collection of the regular
premium tax are applicable to the levy, imposition and collec-
tion of the additional tax.

All moneys collected from this additional tax shall be re-
ceived by the commissioner and paid by him into a special
account in the state treasury, designated the municipal pen-
sions and protection fund. The net proceeds of this tax after
appropriation thereof by the Legislature, shall be distributed
in accordance with the provisions of subsection (c) of this
section.

(b) Before the first day of August, one thousand nine hun-
dred eighty-three, and before the first day of August of each
calendar year thereafter, the treasurer of each municipality
in which a municipal policemen's or firemen's pension and
relief fund has been established shall report to the state aud-
tor the average monthly number of members who worked at
least one hundred hours per month of municipal policemen's
or firemen's pension systems during the preceding fiscal year.
Before the first day of August, one thousand nine hundred
eighty-three, and before the first day of August of each calen-
dar year thereafter, the state fire marshal shall report to the
state auditor the names and addresses of all volunteer and part
volunteer fire companies and departments within the state
which meet the eligibility requirements established in section
eight-a, article fifteen, chapter eight of this code.

Before the first day of September, one thousand nine hun-
dred eighty-three, and before the first day of September of each
calendar year thereafter, the state auditor shall allocate and
distribute the revenues in the municipal pensions and protection
fund which were collected during the preceding calendar year
to municipal policemen's and firemen's pension and relief funds and to volunteer and part volunteer fire companies and departments. Seventy-five percent of the aforementioned revenues allocated shall be allocated to municipal policemen's and firemen's pension and relief funds and twenty-five percent of such allocated revenues shall be allocated to volunteer and part volunteer fire companies and departments.

(c) (1) Each municipal pension and relief fund shall receive a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipality's average monthly number of members who worked at least one hundred hours per month during the preceding fiscal year. All moneys received by municipal pension and relief funds under this section may be expended only for the purposes described in sections sixteen through twenty-eight, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to such share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of such fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-16a. Additional premium tax on excess line brokers.

For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and
additional revenue for volunteer and part volunteer fire com-
panies and departments, an additional annual premium tax
is hereby imposed and required to be paid, on and after the first
day of January, one thousand nine hundred eighty-two, in addi-
tion to the annual premium tax imposed by section sixteen of
this article, which additional tax shall be a sum equal to four
percent of the gross premiums received on the gross business
procured by such licensee on subjects of insurance, resident,
located or to be performed in this state and obtained pursuant
to the provisions of this article, including any so-called
dividends on participating insurance policies applied in reduc-
tion of premiums, less premiums returnable for cancellation.
All provisions of this article relating to the levy, imposition
and collection of the regular premium tax are applicable to the
levy, imposition and collection of this additional tax.

All such taxes paid to the commissioner pursuant to this
section shall be paid by him into a special account in the
state treasury, designated the municipal pensions and protection
fund, and after appropriation by the Legislature, shall be dis-
tributed in accordance with the provisions of subsection (c),
section fourteen-d, article three of this chapter.

CHAPTER 168

(Com. Sub. for H. B. 862—By Mr. Bollouz)

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

AN ACT to amend article two, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section five-b, re-
lating to exceeding the creel limit on trout or otherwise violating
laws, rules and regulations for trout fishing; and providing a
criminal penalty therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5b. Exceeding creel limit on trout; other violations of code or rules and regulations for trout fishing; penalties.

Any person who exceeds the creel limit on trout or who otherwise violates any provisions of this code or any rules and regulations relating to trout fishing is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned in the county jail not less than ten nor more than one hundred days, or both fined and imprisoned.

CHAPTER 169

(Com. Sub. for S. B. 398—By Mr. Colombo)

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

AN ACT to amend and reenact section twenty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three-a, all relating to regulation of outfitters and guides by the department of natural resources; defining certain terms; defining commercial whitewater outfitters; requiring commercial whitewater outfitters to comply with same requirements as outfitters and guides; stating legislative findings and purpose; requiring the director of natural resources to investigate and study commercial whitewater rafting, outfitting and activities in zones where overcrowding, environmental misuse and safety hazards are found to exist; requiring certain fees to be paid by certain commercial whitewater outfitters; providing for a limitation on additional licenses to commercial whitewater outfitters seeking to operate in zones under study; creating an advisory board; providing for composition of board; requiring board to
promulgate rules and regulations applicable to zones studied based upon study of zone by director; providing for enforcement of rules and regulations; setting certain dates by which studies are to be commenced, all rules and regulations are to be promulgated, and the board is to terminate its activities and be discontinued.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides—generally; definitions.

§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

§20-2-23. Outfitters and guides—generally; definitions.

1 Services of outfitters and guides for the benefit and convenience of hunters, fishermen and others in this state are recognized as essential, and such outfitters and guides may be licensed and authorized to serve as provided in this article.

2 The director is hereby authorized to promulgate rules and regulations on services of outfitters and guides as herein authorized and defined.

3 The term “outfitter”, as used herein, shall mean and include any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situate within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person hunting game animals, game birds, fishing or taking expeditions, both land and water, in this state. The term “outfitter” shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or others as a service incidental to his principal occupation or business without advertising outfitter or guide services or holding out to the public the offering of such services. The term “guide”,
as used herein, shall be construed to include and embrace outfitter services and the term "outfitter" shall be construed to include and embrace guide services, but the applicant for any license hereunder may in his or her application elect to be designated as an outfitter or guide.

The term "commercial whitewater outfitter", as used herein, shall mean and include any outfitter duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state designated by the director as whitewater recreation zones.

§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

(a) The Legislature finds that the recent increase in the number of persons engaging in the sport of whitewater rafting has resulted in overcrowding, safety and ecological problems along areas and portions of rivers and waters in this state necessitating the study, investigation and regulation of whitewater rafting to promote the safe and equitable enjoyment of this sport by all persons seeking to engage in it as recreational activity. The Legislature further finds it desirable to require the director of the department of natural resources, pending such study and investigation and the promulgation of necessary rules and regulations applicable to such areas and portions of rivers and waters, to restrict, deny or postpone the issuance of licenses to additional commercial whitewater outfitters seeking to operate in such areas and portions of rivers and waters in this state until the promulgation of such rules and regulations applicable thereto and to provide for the creation of an advisory board to promulgate such rules and regulations.

(b) The director shall investigate and study commercial whitewater rafting, outfitting and activities related thereto, which rafting, outfitting or activities take place along the rivers or waters of the state. The director shall designate any such rivers or waters or any portions thereof, which herein
are referred to as "whitewater zones" for which commercial
whitewater rafting, outfitting and activities are to be
investigated and studied, and shall determine the order and
the periods of time within which such investigations and
studies are to be conducted. The director shall first
investigate and study those whitewater zones which the
director finds to present serious problems requiring
immediate regulation, including without limitation, safety
hazards and problems of overcrowding or environmental
misuse.

(c) Upon the filing of a written notice to be entered upon
the records of the department containing the designation and
reasonable description of the whitewater zone to be
investigated and studied pursuant to subsection (b) above,
the director may not issue licenses to additional commercial
whitewater outfitters seeking to operate in or for the
whitewater zone described in the notice. This limitation on
additional licenses shall continue until the director has
completed investigation and study of the whitewater zone
designated in the notice and the rules and regulations
applicable to such zone are promulgated in accordance with
this section: Provided, That the director may issue additional
licenses for such whitewater zones during the study period
and prior to the promulgation of the rules and regulations
applicable to a zone, if the director finds that such license
would not interfere with the conduct of the pending
investigation and study, and the issuance of such additional
license is in the best interests of persons seeking to enjoy
whitewater rafting and the interests of the state in promotion
of tourism and the recreational and ecological use of the
state's natural resources.

(d) The annual license fees set forth in section twenty-six
of this article for commercial whitewater outfitters and such
annual fee shall be two hundred fifty dollars for each
commercial whitewater outfitter. In addition to such annual
license fee, each commercial whitewater outfitter, operating
within a whitewater zone under investigation and study as
provided in subsection (c) of this section, shall pay to the
director the sum of two hundred fifty dollars as a special
study fee which shall be paid within three months after the
date of the notice and designation of the whitewater zone to
be studied. The annual license fee and the special study fee
may be used to offset and pay for the expenses and costs of
such investigations and studies and the promulgation of rules
and regulations pursuant to this section.

(e) Upon official designation by the director of the first
whitewater zone to be studied as provided in subsection (b) of
this section, the director shall appoint a commercial
whitewater advisory board. Such board shall consist of two
staff employees of the department, three persons
representing three different licensed commercial whitewater
outfitters currently operating within the state, and three
residents of the state who represent the consumers of
commercial whitewater rafting in the state: Provided, That,
for purposes of the appointment of the commercial
whitewater outfitters and consumer members of the board,
there shall be designated three regions within the state as
follows: region one, the counties of Jackson, Roane, Calhoun,
Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour, Preston,
Taylor, Monongalia, Marion, Harrison, Doddridge, Ritchie,
Wirt, Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke
and Hancock; region two, the counties of Greenbrier,
Pocahontas, Pendleton, Hardy, Grant, Mineral, Hampshire,
Morgan, Berkeley and Jefferson; region three, the counties of
Mason, Putnam, Kanawha, Clay, Braxton, Webster, Nicholas,
Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming,
McDowell, Mingo, Logan, Boone, Wayne, Cabell and Lincoln.
The director shall appoint one member representing
commercial whitewater outfitters operating in each of the
three regions. The director shall likewise appoint a citizen
consumer member from each of the three regions. The
director shall serve as an ex officio member of the board and
shall serve as chairperson at meetings.

(f) The commercial whitewater advisory board shall
participate in the investigations and studies conducted by the
director. The board shall meet upon the call of the
chairperson or a majority of the members of the board and
shall meet within a reasonable time after completion of the
director's investigation and study relative to each designated
whitewater zone. At such meetings the board shall review all
data, materials and relevant findings compiled by the director
relating to the investigation and study then under
consideration and, as soon as practicable thereafter, the board shall promulgate rules and regulations to govern and apply to that designated whitewater zone. Such rules and regulations shall include, but not be limited to, the following: (1) minimum safety requirements for equipment; (2) criteria for increasing or limiting the number of commercial whitewater outfitters operating in whitewater zones; (3) standards for the size and number of rafts and numbers of persons transported in rafts; and (4) qualifications of guides. Board members shall be paid all reasonable and necessary expenses incurred in the exercise of their duties.

(g) Upon promulgation of such rules and regulations, the director shall immediately commence enforcement of the rules and regulations promulgated by the board relative to the designated whitewater zone. The promulgation of such rules and regulations and any revision thereof shall be subject to the provisions of chapter twenty-nine-a of this code.

(h) The director shall commence the first investigation and study no later than the first day of July, one thousand nine hundred eighty-one. All activities pursuant to all investigations and studies or as may be required for the promulgation of rules and regulations hereunder shall be completed no later than the first day of July, one thousand nine hundred eighty-four.

(i) The commercial whitewater advisory board shall terminate and cease to exist as an entity one year following a finding made by the director that all studies and investigations and the promulgation of rules and regulations applicable to the last designated whitewater zone have been completed.

CHAPTER 170

(H. B. 1722—By Mr. Balloux)

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

AN ACT to amend and reenact sections thirty-nine, forty, forty-a, forty-six-c and forty-six-e, article two, chapter twenty of the
code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class A, Class B, Class AB and Class Q licenses for residents and Class O licenses for residents and non-residents; increasing the fee of a Class A, Class B and Class AB resident license; requiring a trout stamp be affixed to Class AB, B, F, G and K license and assessing a fee thereof; changing the requirements of Class Q special resident license; and specifying effective date.

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

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

**ARTICLE 2. WILDLIFE RESOURCES.**

§20-2-39. Class A resident statewide hunting and trapping license.

§20-2-40. Class B resident statewide fishing license.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

§20-2-46c. Class O resident and nonresident trout fishing license.

§20-2-46e. Class Q special resident hunting permit for disabled persons.

§20-2-39. **Class A resident statewide hunting and trapping license.**

1 On and after the first day of January, one thousand eight hundred eighty-two, a Class A license shall be a resident statewide hunting and trapping license and shall entitle the licensee to hunt and trap all legal species of game in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are residents of this state. The fee therefor shall be eight dollars.

§20-2-40. **Class B resident statewide fishing license.**

1 On and after the first day of January, one thousand eight hundred eighty-two, a Class B license shall be a resident statewide fishing license and shall entitle the licensee to fish for all legal fish, except trout, in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States, and un-
naturalized persons possessing the permit mentioned in sec-
tion twenty-nine of this article, who are residents of this state.
The fee therefor shall be eight dollars.

Trout fishing is not permitted with a Class B license unless
such license has affixed thereto an appropriate trout stamp
as prescribed by the department of natural resources. The
fee for a trout stamp shall be five dollars. The trout stamp
is in addition to a Class B license.

§20-2-40a. Class AB combination resident statewide hunting, trap-
ing and fishing license.

On and after the first day of January, one thousand nine
hundred eighty-two, a Class AB combination license shall be a
resident statewide hunting, trapping and fishing license and
shall entitle the licensee to hunt and trap for all legal species
of game, and fish for all legal species of fish, except trout, and
frogs in all counties of the state, except as prohibited by rules
or regulations of the director. It shall be issued only to
citizens of the United States and to unnaturalized persons
who possess the permit referred to in section twenty-nine
of this article who are residents of this state. The fee therefor
shall be fourteen dollars.

Trout fishing is not permitted with a Class AB license
unless such license has affixed thereto an appropriate trout
stamp as prescribed by the department of natural resources.
The fee for a trout stamp shall be five dollars. The trout stamp
is in addition to a Class AB license.

§20-2-46c. Class O resident and nonresident trout fishing license.

On and after the first day of January, one thousand nine
hundred eighty-two, a Class O license shall be a resident and
nonresident statewide trout fishing license and shall entitle the
licensee to fish for trout in all counties of the state, except as
prohibited by rules or regulations of the director.

The fee shall be five dollars. The revenue derived from
the sale of this license shall be deposited in the state treasury
and credited to the department of natural resources and
shall be used and paid out, upon order of the director, for
state trout hatchery production.
This license shall be issued in the form of a stamp prescribed by the director, shall be in addition to a Class AB, B, F, G or K license and shall be valid only when affixed thereto.

§20-2-46e. Class Q special resident hunting permit for disabled persons.

On and after the first day of January, one thousand nine hundred eighty-two, a Class Q permit shall be a special statewide hunting permit and shall entitle the permittee to hunt all legal species of game during the designated hunting seasons.

A form for such permit shall be furnished by the director to any applicant who meets the following requirements:

1. He is a resident of this state;
2. He is permanently disabled in the lower extremities;
3. He holds a Class A or AB resident statewide hunting license or a senior citizens license.

The form when properly filled out by a licensed physician shall attest to the disability of the applicant and shall, from the date of signing by the physician, constitute a Class Q permit which the permittee shall have in his possession when hunting during any hunting season for which permittee holds a valid license as provided herein. The director shall establish such rules and regulations as he deems necessary to administer the qualifications and permitting of applicants.

A Class Q permit shall entitle the holder thereof to hunt from a motor vehicle and, notwithstanding the provisions of subsection (10), section five of this article, to possess a loaded firearm in a motor vehicle, but only under the following circumstances:

1. The motor vehicle is stationary;
2. The engine of the motor vehicle is not operating;
3. The permittee is the only occupant of the vehicle;
4. The vehicle is not parked on the right-of-way of any public road or highway; and
30 (e) The permittee observes all other pertinent laws and regulations.

CHAPTER 171
(S. B. 65—By Mr. Colombo)

[Passed March 18, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special hunting licenses for antlerless deer; setting restrictions on obtaining a license to hunt antlerless deer; providing exceptions to such restrictions; requiring that persons licensed to hunt such deer hold certain other hunting licenses and providing certain exceptions for persons over age sixty-five or less than age sixteen; and requiring proof of age in such cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license.

1 A Class N license is a special deer hunting license for antlerless deer of either sex and entitles the licensee to hunt for and kill one antlerless deer of either sex during the Class N license season: Provided, That if a hunter kills a buck deer during the regular deer hunting season, he shall also be permitted to hunt for and kill one antlerless deer during Class N license season if he has applied for and has had issued to him a Class N license. Only one Class N license may be acquired during any calendar year in which the Class N license season is held, and the Class N license can be used only by the applicant. No person receiving a Class N license for any given Class N license season may receive a Class N license for the next consecutive Class N license season. In order to implement this restriction the director shall cause
the names and social security numbers of those persons receiving licenses to be recorded in the department's records. The fee for a Class N license is eight dollars: Provided, however, That the director may issue a Class N license to a person who received a Class N license the preceding year if there are not sufficient applications received from persons who did not receive a Class N license the preceding year to meet the purpose for which Class N licenses are issued.

The Class N license may be issued only for the purpose of removing antlerless deer on a post-season basis when the director deems it essential for proper management of wildlife resources. The director shall establish such rules and regulations governing the issuance of such Class N licenses as he deems necessary to limit, on a fair and equitable basis, the number of persons who may hunt for antlerless deer in any county, or any part of a county: Provided, however, That no more than four Class N licenses shall be issued for each deer that the director desires to have killed during the Class N season.

When the director deems it essential that Class N license season be held in a particular county or part of a county, the season shall be held on the Friday and Saturday following regular deer hunting season, and shall extend beyond the two-day period only upon order of the director when necessary to accomplish the desired kill.

Bona fide resident landowners or their resident children, bona fide resident tenants of such land, and any bona fide resident stockholder of resident corporations which are formed for the primary purpose of hunting or fishing and which are the fee simple owners of no less than one thousand acres of land upon which such antlerless deer may be hunted are not required to have a Class N license in their possession while hunting antlerless deer on their own land during the Class N license season.

A Class N license may be issued only to a resident of this state who holds a valid Class A, Class AB, Class O or Class Q license issued for the current calendar year or a resident of this state who has attained the age of sixty-five years, except that this requirement shall not apply to persons under the age of sixteen. The director shall require proof of age before
issuing a Class N license, and such license shall contain a space for recording the number of the valid Class A, Class AB, Class O or Class Q license.

Notwithstanding any provision of this code to the contrary, no Class N license shall be issued for a county or a part of a county unless, during the regular deer hunting season in the previous year, two bucks have been killed per square mile of deer range in that county or part of the county in which the hunt is held, and the director deems the holding of the Class N season necessary.

CHAPTER 172
(H. B. 870—By Mr. Kopelman)

[Passed April 3, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to wildlife resources; creating a voluntary wildlife check-off program for individual taxpayers; providing for disposition of funds; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. VOLUNTARY WILDLIFE CHECK-OFF PROGRAM.

§20-2A-1. Legislative intent.
§20-2A-4. Use of funds.
§20-2A-5. Effective date.

§20-2A-1. Legislative intent.

It is in the public interest to preserve, protect and perpetuate all species of wildlife for the use and benefit of
the citizens of West Virginia. The intent of this legislation is
to provide additional funding for wildlife programs, to be
primarily used to enhance nongame wildlife programs and
for the management, preservation, protection and perpetua-
tion of nongame species.

The financing of these programs will be derived from a
voluntary check-off and contribution designation on state per-
sonal income tax return forms of a portion or all of a taxpayer's
refund. The funding provided shall be supplemental to existing
revenues.


(a) Each West Virginia individual income tax return form
shall contain a designation as follows:

West Virginia Voluntary Wildlife Check-Off Program.

Check ( ) if you wish to designate $1, $5, $10, or more
of your tax refund for this program. If joint return, check ( )
if spouse wishes to designate $1, $5, $10, or more.

(b) Each individual taxpayer desiring to contribute to
the voluntary wildlife program may designate by placing an
“X” in the appropriate box on the state income tax return
form. His contribution shall be credited to said program.


The tax department shall determine by the first day of
July of each year the total amount designated pursuant to
this legislation and shall report such amount to the state
treasurer who shall credit such amount to a special depart-
ment of natural resources fund.

§20-2A-4. Use of funds.

The funds shall be used for the purpose of enhancement
and perpetuation of nongame wildlife programs in this
state upon order of the director. The director shall on the fift-
teenth day of January each year furnish the Legislature with
a report stating the amount of money that has been provided
and how such moneys have been expended.
§20-2A-5. Effective date.

1. This legislation shall take effect on the first day of January, 1982, and shall apply to tax return forms filed thereafter.

CHAPTER 173
(H. B. 1184—By Mr. Burdette and Miss Shuman)

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

AN ACT to repeal sections one, two, three, four, five, six, seven, eight and nine, article seventeen, chapter five; section two, article six-b, chapter twenty; sections one, two, three and four, article five, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article four, chapter twenty of said code, all relating to repealing the code sections creating and governing the West Virginia commission on energy, economy and environment; repealing the code sections continuing and governing the bureau of Negro welfare and statistics; repealing the code section creating and governing the mining council; and removing references to the Point Pleasant battle monument commission, the Prickett's Fort state park commission, the Droop Mountain battlefield commission, the Philippi battlefield commission and the Carnifex Ferry battleground park commission, and the responsibility of the division of parks and recreation therefor.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight and nine, article seventeen, chapter five; section two, article six-b, chapter twenty; and sections one, two, three and four, article five, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one, article four, chapter twenty of said code be amended and reenacted, all to read as follows:
ARTICLE 4. PARKS AND RECREATION.

§20-4-1. Duties and functions of division of parks and recreation.

The division of parks and recreation herein created and established shall have within its jurisdiction and supervision:

(a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) Administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this chapter.

Berkeley Springs sanitarium in Morgan county shall be continued as a state recreational facility under the jurisdiction and supervision of the division of parks and recreation and shall be managed, directed and controlled as prescribed in articles one and four, chapter twenty of the code.

The director shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties with regard to Berkeley Springs sanitarium that were previously vested in and performed by the state commissioner of public institutions, who shall no longer have such power and authority and whose power and authority with regard to Berkeley Springs sanitarium is hereby abolished. The title to all property consisting of or belonging to Berkeley Springs sanitarium is hereby transferred to and shall be vested in the director who shall be the custodian of all deeds and other muniments of title to all of that property and shall
cause those deeds and muniments susceptible of recordation
to be recorded in the proper office.

The chief of the division shall be primarily responsible for
the execution and administration of the provisions of this
article as an integral part of the natural resources program
of the state and shall organize and staff his division for the
orderly, efficient and economical accomplishment of these ends.

CHAPTER 174
(S. B. 338—By Mr. McGraw, Mr. President)

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

AN ACT to amend and reenact sections three, six and fourteen,
article five-c, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to further
amend said article by adding thereto a new section, designated
section twenty-four, all relating to defining certain terms;
establishing the powers, duties and responsibilities of the West
Virginia water development authority; authorizing the
authority to fund and issue bonds to fund projects to establish
facilities for the treatment and distribution of potable, sanitary
water for human consumption and use; providing for rentals
and revenues from water development projects owned by the
authority; providing for the contracts and leases of the
authority; providing for cooperation with other governmental
agencies; and placing a limit on borrowing by the authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-3. Definitions.

§20-5C-6. Powers, duties and responsibilities of authority generally.
§20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.


§20-5C-3. Definitions.

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

2 (1) “Authority” means the West Virginia water development authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

3 (2) “Beneficial use” means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

4 (3) “Board” means the West Virginia water development authority board created in section four of this article, which shall manage and control the West Virginia water development authority.

5 (4) “Bond” or “water development revenue bond” means a revenue bond or note issued by the West Virginia water development authority to effect the intents and purposes of this article.

6 (5) “Construction” includes reconstruction, enlargement, improvement and providing furnishings or equipment.

7 (6) “Cost” means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private
property, including the cost of land or easements therefor; the
cost of all machinery, furnishings, and equipment; all
financing charges, and interest prior to and during
construction and for no more than eighteen months after
completion of construction; the cost of all engineering
services and all expenses of research and development with
respect to public water or waste water facilities; the cost of all
legal services and expenses; the cost of all plans,
specifications, surveys and estimates of cost and revenues; all
working capital and other expenses necessary or incident to
determining the feasibility or practicability of acquiring or
constructing any such project; all administrative expenses
and such other expenses as may be necessary or incident to
the acquisition or construction of the project; the financing of
such acquisition or construction, including the amount
authorized in the resolution of the authority providing for the
issuance of water development revenue bonds to be paid into
any special funds from the proceeds of such bonds; and the
financing of the placing of any such project in operation. Any
obligation or expenses incurred after the effective date of this
section by any governmental agency, with the approval of the
authority, for surveys, borings, preparation of plans and
specifications and other engineering services in connection
with the acquisition or construction of a project shall be
regarded as a part of the cost of such project and shall be
reimbursed out of the proceeds of loans or water
development revenue bonds as authorized by the provisions
of this article.

(7) "Establishment" means an industrial establishment,
mill, factory, tannery, paper or pulp mill, mine, colliery,
brake or mineral processing operation, quarry, refinery,
well, and each and every industry or plant or works or activity
in the operation or process of which industrial wastes, or
other wastes are produced.

(8) "Governmental agency" means the state government
or any agency, department, division or unit thereof; counties;
municipalities; watershed improvement districts; soil
conservation districts; sanitary districts; public service
districts; drainage districts; regional governmental
authorities and any other governmental agency, entity,
political subdivision, public corporation or agency having the
authority to acquire, construct or operate public water or waste water facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(9) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or any combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, shall also be considered industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the
contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) "Project" or "water development project" means any public water or waste water facility, the acquisition or construction of which is authorized in whole or in part by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized in whole or in part by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) "Public roads" means all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.
(16) "Public utility facilities" means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia water development authority to governmental agencies to finance in whole or in part the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present.

(19) "Water resources," "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) "Waste water" means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and shall include, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) "Waste water facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or
other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

(22) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§20-5C-6. Powers, duties and responsibilities of authority generally.

The West Virginia water development authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections eight, nine and fourteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with
the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects, and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in section eight of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water or waste water facilities operated under permits issued pursuant to the provisions of article five-a, chapter twenty of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other
than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section fourteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents and other employees, who shall be covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any water development project or for
research and development with respect to public water or waste water facilities and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water or waste water facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

This section shall apply to any water development project or projects which are owned in whole or in part by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more
governmental agencies, or any combination thereof, desiring
the use or services thereof, and fix the terms, conditions,
rentals or other charges for such use or services. Such rentals
or other charges shall not be subject to supervision or
regulation by any other authority, department, commission,
board, bureau or agency of the state, and such contract may
provide for acquisition by such person or governmental
agency of all or any part of such water development project
for such consideration payable over the period of the contract
or otherwise as the authority in its sole discretion determines
to be appropriate, but subject to the provisions of any
resolution authorizing the issuance of water development
revenue bonds or notes or water development revenue
refunding bonds of the authority or any trust agreement
securing the same. Any governmental agency which has
power to construct, operate and maintain public water or
waste water facilities may enter into a contract or lease with
the authority whereby the use or services of any water
development project of the authority will be made available
to such governmental agency and pay for such use or services
such rentals or other charges as may be agreed to by such
governmental agency and the authority.

Any governmental agency or agencies or combination
thereof may cooperate with the authority in the acquisition or
construction of a water development project and shall enter
into such agreements with the authority as are necessary,
with a view to effective cooperative action and safeguarding
of the respective interests of the parties thereto, which
agreements shall provide for such contributions by the
parties thereto in such proportion as may be agreed upon and
such other terms as may be mutually satisfactory to the
parties, including, without limitation the authorization of the
construction of the project by one of the parties acting as
agent for all of the parties and the ownership and control of
the project by the authority to the extent necessary or
appropriate for purposes of the issuance of water
development revenue bonds by the authority. Any
governmental agency may provide such contribution as is
required under such agreements by the appropriation of
money or, if authorized by a favorable vote of the electors to
issue bonds or notes or levy taxes or assessments and issue
notes or bonds in anticipation of the collection thereof, by the
issuance of bonds or notes or by the levying of taxes or
assessments and the issuance of bonds or notes in
anticipation of the collection thereof, and by the payment of
such appropriated money or the proceeds of such bonds or
notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of
the electors in an election held for the purpose of issuing
bonds to provide funds to acquire, construct or equip, or
provide real estate and interests in real estate for a public
water or waste water facility, whether or not the
governmental agency at the time of such an election had the
authority to pay the proceeds from such bonds or notes
issued in anticipation thereof to the authority as provided in
this section, may issue such bonds or notes in anticipation of
the issuance thereof and pay the proceeds thereof to the
authority in accordance with an agreement between such
governmental agency and the authority: Provided, That the
legislative authority of the governmental agency finds and
determines that the water development project to be acquired
or constructed by the authority in cooperation with such
governmental agency will serve the same public purpose and
meet substantially the same public need as the facility
otherwise proposed to be acquired or constructed by the
governmental agency with the proceeds of such bonds or
notes.


The aggregate principal amount of bonds and notes issued
by the authority shall not exceed one hundred million dollars
outstanding at any one time: Provided, 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 authority or by exchange for any such
refunding bonds or notes, shall be excluded.
AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to department of natural resources law-enforcement procedures and penalties; removing the requirement that special conservation officers employed by the department of natural resources reside on state park premises; and deleting the provision allowing a subsistence allowance to be paid to the chief conservation officer and full-time uniformed conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTOR-BOATING.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers; subsistence allowance; expenses.

1 The department's law-enforcement policies, practices and programs shall be under the immediate supervision and direction of the department law-enforcement officer selected by the director and designated as chief conservation officer as provided in article one hereof.

6 Under the supervision of the director, the chief conservation officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the department's comprehensive natural resources program. All department personnel detailed and assigned to law-enforcement duties and services hereunder shall be known and designated as conservation officers and
shall be under the immediate supervision and direction of the chief conservation officer. All such conservation officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by department law-enforcement needs.

The chief conservation officer, acting under supervision of the director, is authorized to select and appoint emergency conservation officers for a limited period of time for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency conservation officers shall be selected from qualified civil service personnel of the department, except in emergency situations and circumstances when the director may designate such officers, without regard to such requirements and qualifications, to meet law-enforcement needs. Emergency conservation officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried conservation officers except the provisions of subdivision (8).

The chief conservation officer, acting under supervision of the director, is also authorized to select and appoint as special conservation officers any full-time civil service employee of the department who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the department and who has satisfactorily completed a course of training established and administered by the chief conservation officer, when such action is deemed necessary because of law-enforcement needs. The powers and duties of a special conservation officer, appointed under this provision, shall be the same within his assigned area as prescribed for full-time salaried conservation officers. The jurisdiction of such person appointed as a special conservation officer, under this provision, shall be limited to the department area or areas to which he is assigned and directly manages.

The chief conservation officer, acting under supervision of the director, is also authorized to appoint as special conservation officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief conservation officer. The jurisdiction of forest fire control
personnel appointed as special conservation officers shall be limited to the enforcement of the provisions of article three of this chapter.

The chief conservation officer, with the approval of the director, shall have the power and authority to revoke any such appointment of an emergency conservation officer or of a special conservation officer at any time.

Conservation officers shall be subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the department.

The chief conservation officer shall designate the area of primary residence of each conservation officer, including himself. Since the area of business activity of the department is actually anywhere within the territorial confines of the state of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

CHAPTER 176
(S. B. 526—By Mr. Gainer and Mr. Colombo)

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

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections four-a and four-b, relating to natural resources; law-enforcement procedures and penalties; and procedures to be followed when arrests are made by conservation officers.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections four-a and four-b, to read as follows:
ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-4a. Arrest procedure.
§20-7-4b. Record of cases.

§20-7-4a. Arrest procedure.

(a) Whenever a person is arrested for any violation of this chapter punishable as a misdemeanor, and such person is not immediately taken before a magistrate or court, the arresting officer shall prepare written notice to appear in court containing the name, address, date of birth, sex, hunting or fishing license number, if any, and social security number of such person, serial number or description of any property found in the possession of the person arrested and susceptible to use in committing the offense charged, if any, the offense charged and the time and place, when and where such person shall appear in court.

(b) The time specified in said notice to appear must be at least five days after such arrest unless the person arrested demands an earlier hearing.

(c) The place specified in said notice to appear must be before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release, as provided in this section, must accept a copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from custody.

§20-7-4b. Record of cases.

Every magistrate or judge of a court shall keep or cause to be kept a record of every complaint, or other legal form of charge, which alleges a violation of the provisions of this chapter or the rules and regulations promulgated thereunder, deposited with or presented to said court, and shall keep a record of every official action
by said court in reference thereto, including, but not limited to, a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture resulting from every said complaint or charge deposited with or presented to said court.

CHAPTER 177
(H. B. 1716—By Mr. Damron, 10th Dist., and Mr. Kepp)

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

AN ACT to amend and reenact section eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-a, relating to employing the oil and gas conservation commissioner as acting administrator of the office of oil and gas; authorizing additional salary for the commissioner; allowing the director of the department of mines to employ an administrative assistant to the commissioner to assist with duties of acting administrator; allocating salary of administrative assistant from special oil and gas conservation tax; and filing of maps and plans as a prerequisite for extending coal mining operations to within two hundred feet of a well, or to a mine through a well.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-11. Coal operators—Procedure before operating near wells.
§22-4-11a. Oil and gas conservation commissioner as acting administrator; administrative assistant.
§22-4-11. Coal operators—Procedure before operating near wells.

(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the department of mines and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

Once these mining maps and plans are filed with the department of mines, the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the department of mines, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the department of mines and the well operator.

(b) Application may be made at any time to the department of mines by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the department of mines and naming the well operator as a respondent. The coal operator shall file such petition with the department of mines and mail a true copy to the well operator by certified mail, return receipt requested.

The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the department of mines may approve the proposed operations as requested if it be shown by the petitioner
or otherwise to the satisfaction of the department of mines that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer, and the department of mines shall fix a time and date and give both the coal operator and well operator five days' written notice of same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the department of mines, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the department of mines shall grant the request of the coal operator or refuse to grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: Provided, That a grant by the department of mines of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified well, the department of mines shall grant the request of the coal operator within five days after the petition's original five day answer period if the department of mines determines that such operations are just, reasonable and in accordance with law and the provisions of this article.

The department of mines shall docket and keep a record of all such proceedings substantially as required in the last paragraph of section three of this article, and from any such final decision or order of the department of mines, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, article four, chapter twenty-two of this code, with the department of mines being named as a respondent. From any final order or decree of the circuit court, an appeal may be taken to the supreme court of appeals as heretofore provided.
A copy of the document or documents evidencing the action of the department of mines with respect to such petition shall promptly be filed with the administrator.

(c) Before a coal operator conducts surface or strip mining operations as defined in article six, chapter twenty of this code, within two hundred feet of any well, including the removal of coal and other material, the operator shall file with the department of mines and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article six, chapter twenty of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the department of mines, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

(d) The filing of petitions and notices with the department of mines as herein provided may be complied with by mailing such petition or notice to the department of mines by certified mail, return receipt requested.

§22-4-11a. Oil and gas conservation commissioner as acting administrator; administrative assistant.

The director of the department of mines, with permission of the oil and gas conservation commission, may employ the oil and gas conservation commissioner as acting adminis-
trator of the office of oil and gas, providing the commissioner
otherwise meets the qualifications for administrator of the
office of oil and gas, and pay him an additional amount not
to exceed the minimum salary provided for the administrator
of the office of oil and gas; and additionally, the director
may employ an administrative assistant to the oil and gas
conservation commissioner, to be approved by the oil and
gas conservation commissioner for purposes of acting as the
assistant to the oil and gas conservation commissioner in
carrying out his duties as acting administrator of the office
of oil and gas, the salary of the administrative assistant to
be paid from moneys collected by the oil and gas conservation
commission for the special oil and gas conservation tax
imposed pursuant to section thirteen, article four-a of this
chapter. In no event shall the term of appointment of the
oil and gas conservation commissioner as acting administrator
or the administrative assistant to the oil and gas conservation
commissioner extend beyond June thirtieth, one thousand nine
hundred eighty-two.

CHAPTER 178
(Com. Sub. for S. B. 31—By Mr. Steptoe)

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

AN ACT to amend and reenact section one, article two, chapter
thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to abolishing the
diploma privilege for graduates of the college of law of
West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter thirty of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 2. ATTORNEYS AT LAW.

§30-2-1. Certificate of good moral character; examination of applicants for license; licenses.

Any person desiring to obtain a license to practice law in the courts of this state shall appear before the circuit court of the county in which he has resided for the last preceding year and prove to the satisfaction of the court, or to the satisfaction of a committee of three attorneys practicing before the court, appointed by the court, that he is a person of good moral character, that he is eighteen years of age, and that he has resided in such county for one year next preceding the date of his appearance; and upon the presentation of such proof, the court shall enter an order on its record accordingly. The supreme court of appeals shall prescribe and publish rules and regulations for the examination of all applicants for admission to practice law, which shall include the period of study and degree of preparation required of applicants previous to being admitted, as well as the method of examinations, whether by the court or otherwise. And the supreme court of appeals may, upon the production of a duly certified copy of the order of the circuit court, herebefore mentioned, and upon being satisfied that the applicant has shown, upon an examination conducted in accordance with such rules and regulations, that he is qualified to practice law in the courts of this state, and upon being further satisfied that such rules and regulations have been complied with in all respects, grant such applicant a license to practice law in the courts of this state, and such license shall show upon its face that all the provisions of this section and of the said rules have been complied with: Provided, That any person who shall produce a duly certified copy of such order of the circuit court, and also a diploma of graduation from the college of law of West Virginia University reflecting a date of graduation prior to the first day of July, one thousand nine hundred eighty-three, shall, upon presentation thereof in any of the courts of this state, be entitled to practice in any and all courts of this state, and
37 the order so admitting him shall state the facts pertaining
38 to the same.

CHAPTER 179
(S. B. 682—By Mr. Wise and Mr. Tomblin)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending until the first day of July, one thousand nine hundred eighty-four, certain temporary permits to practice medicine and surgery in the state; extending a certain privilege to take a certain examination; and expanding to three years a certain privilege to practice medicine and surgery in specified geographical areas of the state; establishing a program to assist temporary license holders in preparing for the medical examination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry; educational training permits; temporary licenses and permits.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is
3 qualified to do so in accordance with the provisions of this
4 article.

5 (b) For an individual to be licensed to practice medicine and surgery in this state, he must meet the following requirements:

6 (1) He shall submit an application to the board for a receipt of
provided by the board and remit to the board an examination fee not to exceed two hundred fifty dollars, the amount of such fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he is physically and mentally capable of engaging in the practice of medicine and surgery;

(2) He must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine which is approved by the liaison committee on medical education or by the board;

(3) He must submit evidence to the board of having completed a minimum of one year of graduate clinical training in a program approved by the board; and

(4) He must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: 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. If an applicant fails to pass the examination on two occasions, he shall successfully complete a course of study or training, as approved by the board, designed to improve his ability to engage in the practice of medicine and surgery, before being eligible for reexamination: Provided further, That said board is required to establish a program that will assist all temporary license holders in preparing for and passing the technical examination prescribed by it: Provided further, That the board shall maintain the program until the first day of the year one thousand nine hundred eighty-four, and shall make
an annual report of its activities to the Legislature for each
year the program is maintained.

(c) In addition to the requirements of subsection (b)
hereof, any individual who has received the degree of doctor
of medicine or its equivalent from a school of medicine
located outside of the United States, the Commonwealth of
Puerto Rico and Canada, to be licensed to practice medicine
in this state, must also meet the following additional
requirements and limitations:

(1) He must be able to demonstrate to the satisfaction of
the board his ability to communicate in the English language;

and

(2) He must have fulfilled the requirements of the
educational council for foreign medical graduates for
certification before taking a licensure examination, including
the receipt of a passing score on the educational council for
foreign medical graduates examination; and

(3) An individual subject to the provisions of this
subsection shall not be awarded a temporary permit unless
such individual was a bona fide resident of this state for the
six-month period preceding the filing of his application for
such temporary permit: Provided, That an individual subject
to the provisions of this subsection who did not hold a
temporary permit before June eight, one thousand nine
hundred seventy-nine, shall be ineligible for a temporary
permit if he has failed to pass the medical examination
prescribed by the board on two or more occasions.

(d) For an individual to be licensed to practice podiatry in
this state, he must meet the following requirements:

(1) He shall submit an application to the board on a form
provided by the board and remit to the board an examination
fee not to exceed two hundred fifty dollars, the amount of
such fee to be set by the board. The application must, as a
minimum, require a sworn and notarized statement that the
applicant is of good moral character and that he is physically
and mentally capable of engaging in the practice of podiatric
medicine;

(2) He must provide evidence of graduation and receipt of
the degree of doctor of podiatric medicine or its equivalent
from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he shall successfully complete a course of study or training, as approved by the board, designed to improve his ability to engage in the practice of podiatric medicine, before being eligible for reexamination.

(e) An individual meeting the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section, may be granted an educational training permit to practice medicine and surgery. Such permits shall authorize the permit holder to practice medicine and surgery only under the supervision of a licensed physician in a training program approved by the liaison committee on graduate medical education or the board. The board may fix and collect a fee not to exceed fifty dollars for this class of permit.

(f) If the board determines that the public health in a specified geographical area of the state requires such action, the board may grant a temporary permit to an individual who meets the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section. Such license shall be limited to the specified geographical area and shall be valid for a period of not more than one year. The board may fix and collect a fee not to exceed fifty dollars for this class of temporary permit.

(g) All licenses or temporary permits granted prior to the effective date of this article and valid on the effective date of this article shall continue in full effect for such term and under such conditions as provided by law at the time of the granting of the license or temporary permit: Provided, 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 ineligible for a temporary license permit to practice in any mental health or state-owned facility and in any hospital, clinic, physician's office and any other approved health care facility until the first day of July, one thousand nine hundred eighty-four, by virtue of his failure to pass the medical examination prescribed by the board, so long as such physician shall take said examination at least once each year: Provided, however, that any such physician granted a temporary permit who fails to pass the medical examination prescribed by the board before the first day of July, one thousand nine hundred eighty-four, shall be thereafter disqualified from obtaining any further temporary permits in this state: Provided further, that the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June eleventh, one thousand nine hundred sixty-five: And provided further, that all persons licensed to practice chiropody prior to June eleventh, one thousand nine hundred sixty-five, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

CHAPTER 180
(S. B. 647—By Mr. Williams)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the per diem rate for the board of examiners for registered nurses; increasing the license fee for registered professional nurses for year commencing the first day of July, one thousand nine hundred eighty-two; and raising the maximum allowable fee for examination.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-3. Board of examiners for registered professional nurses.

The governor shall appoint, by and with the advice and consent of the Senate, a board consisting of five members who shall constitute and be known as the West Virginia board of examiners for registered professional nurses.

Appointments hereunder shall be made by the governor, by and with the advice and consent of the Senate, from lists submitted to the governor by the West Virginia nurses' association. Such lists shall contain the names of at least three persons eligible for membership for each membership or vacancy to be filled and shall be submitted to the governor on or before the first day of June of each year and at such other time or times as a vacancy on the board shall exist. Appointments under the provisions of this article shall be for a term of five years each or for the unexpired term, if any, of the present members. Any member may be eligible for reappointment, but no member shall serve longer than two successive terms. Vacancies shall be filled in the same manner as is provided for appointment in the first instance. The governor may remove any member for neglect of duty, for incompetence, or for unprofessional or dishonorable conduct.

Each member of the board hereafter appointed shall (a) be a citizen of the United States and a resident of this state, (b) be a graduate from an accredited educational program in this or any other state for the preparation of practitioners of registered professional nursing, or be a graduate from an accredited college or university with a major in the field of nursing, (c) be a graduate from an accredited college or university, (d) be a registered professional nurse licensed in this state or eligible for licensure as such, (e) have had at least five years of experience in teaching in an educational
program for the preparation of practitioners of registered professional nursing, or in a combination of such teaching and either nursing service administration or nursing education administration, and (f) have been actually engaged in registered professional nursing for at least three within the past five years preceding his or her appointment or reappointment.

Each member of the board shall receive fifty dollars for each day actually spent in attending meetings of the board, or of its committees, and shall also be reimbursed for actual and necessary expenses: Provided, That the per diem increased by this amendment shall be effective upon passage of this article.

§30-7-6. Qualifications; licensure; fees; temporary permits.

1 To obtain a license to practice registered professional nursing, an applicant for such license shall submit to the board written evidence, verified by oath, that he or she (a) is of good moral character; (b) has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; and (c) has completed an accredited program of registered professional nursing education and holds a diploma of a school accredited by the board.

The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to practice registered professional nursing. The board shall determine the times and places for examinations. In the event an applicant shall have failed to pass examinations on two occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

The board may, upon application, issue a license to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or
foreign country if in the opinion of the board the applicant
meets the qualifications required of registered professional
nurses at the time of graduation.

Any person holding a valid license designated as a "waiver
license" may submit an application to the board for a license
containing no reference to the fact that such person has
theretofore been issued such "waiver license." The provisions
of this section relating to examination and fees and the
provisions of all other sections of this article shall apply to
any application submitted to the board pursuant to the
provisions of this paragraph.

Any person applying for a license to practice registered
professional nursing under the provisions of this article shall,
with his or her application, pay to the board a fee of forty
dollars: Provided, That the fee to be paid for the year
commencing the first day of July, one thousand nine hundred
eighty-two, shall be seventy dollars: Provided, however, That
the board in its discretion may, by rule or regulation, decrease
either or both said license fees. In the event it shall be
necessary for the board to reexamine any applicant for a
license, an additional fee shall be paid to the board by the
applicant for reexamination: Provided further, That the total
of such additional fees shall in no case exceed one hundred
dollars for any one examination.

Any person holding a license heretofore issued by the West
Virginia state board of examiners for registered nurses and
which license is valid on the date this article becomes
effective shall be deemed to be duly licensed under the
provisions of this article for the remainder of the period of
any such license heretofore issued. Any such license
heretofore issued shall also, for all purposes, be deemed to be
a license issued under this article and to be subject to the
provisions hereof.

The board shall, upon receipt of a duly executed
application for licensure and of the accompanying fee of
seventy dollars, issue a temporary permit to practice
registered professional nursing to any applicant who has
received a diploma from a school of nursing approved by the
board pursuant to this article after the date the board last
scheduled a written examination for persons eligible for
licensure: Provided, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.

CHAPTER 181
(Com. Sub. for S. B. 129—By Mr. Nelson)
[Passed March 2, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that certain school psychologists in the state need not have a state license or temporary permit to practice school psychology and need not work under the supervision of a licensed psychologist.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PSYCHOLOGISTS.

§30-21-2. Definitions.
§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

§30-21-2. Definitions.

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

2 (a) “Applicant” means any person making application for an original or renewal license or a temporary permit under the provisions of this article.

3 (b) “Licensee” means any person holding a license or a temporary permit issued under the provisions of this article.
8 (c) "Board" means the board of examiners of psychologists created by this article.

(d) "Psychology" means the science involving the principles, methods and procedures of understanding, predicting and influencing behavior; the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; the methods and procedures of interviewing and counseling; the methods and procedures of psychotherapy, meaning the use of learning, conditioning methods and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes and behavior, which are intellectually, socially or emotionally maladjustive or ineffectual; the constructing, administering and interpreting of tests of intelligence, special abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivation; the psychological evaluation, prevention and improvements of adjustment problems of individuals and groups; and the resolution of interpersonal and social conflicts.

(e) "Practice of psychology" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, any psychological service involving:
(i) The application of the principles, methods and procedures of understanding, predicting and influencing behavior; (ii) the application of the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; (iii) the application of the methods and procedures of interviewing and counseling; (iv) the application of the methods and procedures of psychotherapy, meaning the use of learning, conditioning methods and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes and behavior, which are intellectually, socially or emotionally maladjustive or ineffectual; (v) the constructing, administering and interpreting of tests of intelligence, special abilities, aptitudes, interests, personality characteristics, emotions and motivation; (vi) the psychological evaluation, prevention and improvement of adjustment problems of individuals and groups; and (vii) the resolution of interpersonal and social conflicts.
However, for the purpose of this article, the term "practice of psychology" shall not include:

(1) Teaching, lecturing or engaging in research in psychology as part of salaried employment at an institution of higher learning;

(2) The official duties of a person employed as a psychologist by the state of West Virginia or any of its departments, agencies, divisions or bureaus, or local governments, except for the West Virginia department of education, a county board of education, or a regional education agency, which duties are performed under the direct and regular supervision of a licensee;

(3) The official duties of a person employed as a psychologist by any department, agency, division or bureau of the United States of America;

(4) The official duties of a person working under the direct and regular supervision of a licensee for the purpose of gaining the experience required for a license hereunder by the provisions of subdivision (4), subsection (a), section seven of this article, which experience is of a type approved by the board;

(5) The use, in good faith, of certain psychological techniques, procedures, methods and principles as an incident to engaging in a recognized occupation or profession, other than the practice of psychology, including, but not limited to, the occupation or profession of a physician, lawyer, dentist, social worker, sociologist, political scientist, economist, probation or parole officer, rehabilitation or marriage counselor, clergyman, audiologist, speech pathologist, teacher, educational or guidance counselor and a placement or personnel director;

(6) The activities of a student of psychology, psychological intern or psychological resident, which activities are a part of and are engaged in pursuant to a course of study at an institution of higher learning; or

(7) The activities of an assistant or technician which are performed under the direct and regular supervision of a licensee.
(f) "Examination" means the examination in psychology required by subdivision (5), subsection (a), section seven of this article.

§30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.

(a) No person shall engage in, offer to engage in, or hold himself out to the public as being engaged in, the practice of psychology in this state, nor shall any person use in connection with any trade, business, profession or occupation, except in those instances specifically excluded from the definition of the practice of psychology by subparagraphs (1), (2), (3), (4) and (6), subdivision (e), section two of this article, the word "psychologist," "psychology," "psychological" or any other title, word or abbreviation which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of psychology, unless and until he shall first obtain a license or temporary permit to engage in the practice of psychology in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked: Provided, That such license or temporary permit shall not be required for an individual who is the holder of a school psychology certificate issued by the West Virginia department of education and who is engaged in the practice of psychology solely within the scope of his employment with the West Virginia department of education, a county board of education, or a regional education agency: Provided, however, That no such license or temporary permit shall be required for a psychologist who is not a resident of this state, who is the holder of a license or certificate to engage in the practice of psychology issued by a state with licensing or certification requirements determined by the board to be at least as great as those provided in this article, who has no regular place of practice in this state and who engages in the practice of psychology in this state for a period of not more than ten days in any calendar year.

(b) No firm, association or corporation shall, except through a licensee or licensees, render any service or engage in any activity which if rendered or engaged in by any individual would constitute the practice of psychology.
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine, relating to law-enforcement officers and their training and qualification; creating a law-enforcement training subcommittee of the governor’s committee on crime, delinquency and corrections; requiring the governor’s committee to administer provisions of the article with recommendation of the subcommittee; establishing a special revenue account for the funding of training academies and payment of expenses of the governor’s committee; providing for funding of special revenue account by assessing additional two dollar fee for court costs and for bonds posted for criminal violations other than violations of municipal parking ordinances; requiring certification of all law-enforcement officers in the state; providing special time periods for certain law-enforcement agencies to have their officers comply with certification requirements; establishing criteria for granting certification; assigning responsibility for compliance with article; and permitting law-enforcement agencies to pay wages and expenses of personnel during training and to demand reimbursement from personnel who voluntarily quit within one year of such training.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT OFFICER TRAINING AND CERTIFICATION.
§30-29-8. Agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.

§30-29-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

"Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

"Chief executive" means the superintendent of the department of public safety; the chief conservation officer, department of natural resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency;

"County" means the fifty-five major political subdivisions of the state;

"Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

"Governor's committee on crime, delinquency and corrections" or "governor's committee" means the governor's committee on crime, delinquency and corrections established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code.

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and, enforce the laws of the state or any county or municipality thereof, other than parking ordinances. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or college campus security personnel.

"Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;
“Subcommittee” or “law-enforcement training subcommittee” means the subcommittee of the governor’s committee on crime, delinquency and corrections created by section two of this article; and

“West Virginia law-enforcement agency” means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

§30-29-2. Law-enforcement training subcommittee.

(a) A subcommittee of the governor’s committee on crime, delinquency and corrections is hereby created and assigned responsibility for review and administration of programs for qualification, training and certification of law-enforcement officers in the state. The subcommittee shall be comprised of nine members of the governor’s committee including one representative of each of the following: the department of public safety, the West Virginia sheriffs association, the West Virginia association of chiefs of police, the West Virginia deputy sheriffs association, the West Virginia fraternal order of police lodge, the West Virginia municipal league, the West Virginia association of county officials, the human rights commission and the public at large.

(b) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

§30-29-3. Duties of the governor’s committee and the subcommittee.

Upon recommendation of the subcommittee, the governor’s committee shall, by or pursuant to rule or regulation:

(a) Provide funding for the establishment and support of law-enforcement training academies in the state;

(b) Establish standards governing the establishment and operation of law-enforcement training academies;
(c) Establish minimum law-enforcement instructor qualifications;
(d) Certify qualified law-enforcement instructors;
(e) Maintain a list of approved law-enforcement instructors;
(f) Promulgate standards governing the qualification of law-enforcement officers and the entry level law-enforcement training curricula, which shall consist of a minimum of four hundred classroom hours;
(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;
(h) Certify law-enforcement officers, as provided in section five of this article;
(i) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article; and
(j) Submit, on or before the thirtieth day of September of each year, to the governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

§30-29-4. Special revenue account—Collections; disbursements; administrative expenses.

(a) Beginning on the effective date of this article, a two dollar fee shall be added to the usual court costs of all criminal court proceedings involving violation of any criminal law of the state or any county or municipality thereof, excluding violations of municipal parking ordinances.

(b) Beginning on the effective date of this article, a two dollar fee shall be added to the amount of any cash or property bond posted for violation of any criminal law of the state or any county municipality thereof, excluding bonds posted solely for violation of municipal parking ordinances. Upon
forfeiture of such bond, the two dollar fee shall be deposited
as provided in subsection (c) of this section.

(c) All fees collected pursuant to subsections (a) and
(b) of this section shall be deposited in a separate account
by the collecting agency. Within ten calendar days following
the beginning of each calendar month, the collecting agency
shall forward the amount deposited to the state treasurer.
The treasurer shall deposit all fees so received to a special
revenue account. Funds in the account shall be disbursed by
the governor's committee, upon recommendation by the sub-
committee, for the funding of law-enforcement training aca-
demies and programs and to pay expenses of the governor's
committee in administering the provisions of this article, which
expenses may not in any fiscal year exceed ten percent of
the funds deposited to said special revenue account during that
fiscal year.

§30-29-5. Certification requirements.

(a) Except as provided in subsections (b) and (g) below, no person may be employed as a law-enforcement officer by
any West Virginia law-enforcement agency on or after the
effective date of this article unless the person is certified, or is
certifiable in one of the manners specified in subsections
(c) through (e) below, by the governor's committee as having
met the minimum entry level law-enforcement qualification and
training program requirements promulgated pursuant to this
article.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners
specified in subsections (c) through (e) below, may be
conditionally employed as a law-enforcement officer until certi-
ﬁed: Provided, That, within ninety calendar days of the
commencement of employment or the effective date of this
article if the person is already employed on the effective date,
he or she makes a written application to attend an approved
law-enforcement training academy. The academy shall notify
the applicant in writing of the receipt of the application and of
the tentative date of the applicant's enrollment. Any applicant
who, as the result of extenuating circumstances acceptable to
his or her law-enforcement official, is unable to attend the
scheduled training program to which he or she was admitted
may reapply and shall be admitted to the next regularly
scheduled training program. An applicant who satisfactorily
completes the program shall, within thirty days of completion,
make written application to the governor's committee re-
questing certification as having met the minimum entry level
law-enforcement qualification and training program require-
ments. Upon determining that an applicant has met the re-
quirements for certification, the governor's committee shall
forward to the applicant documentation of certification. An
applicant who fails to complete the training program to which
he or she is first admitted, or was admitted upon application,
may not be certified by the governor's committee.

(c) Any person who is employed as a law-enforcement
officer on the effective date of this article and is a graduate
of the West Virginia basic police training course, the West
Virginia department of public safety cadet training program,
or other approved law-enforcement training academy, is certi-
able as having met the minimum entry law-enforcement train-
ing program requirements and is exempt from the requirement
of attending a law-enforcement training academy. To re-
ceive certification, the person shall make written application
within ninety calendar days of the effective date of this
article to the governor's committee requesting certification.
The governor's committee shall review the applicant's relevant
scholastic records and, upon determining that the applicant
has met the requirements for certification, shall forward to
the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement
officer on the effective date of this article and is not a graduate
of the West Virginia basic police training course, the West
Virginia department of public safety cadet training program,
or other approved law-enforcement training academy, is certi-
fiable as having met the minimum entry level law-enforcement
training program requirements and is exempt from the require-
ment of attending a law-enforcement training academy if the
person has attained exempt rank and has been employed as a
law-enforcement officer for a period of not less than ten years.
To receive certification, the person shall make written applic-
ation within ninety calendar days following the effective
date of this article to the governor's committee requesting
certification. The application shall include notarized state-
ments as to the applicant's rank and years of employment
as a law-enforcement officer. The governor's committee shall
review the application and, upon determining that the applicant
has met the requirements for certification, shall forward to the
applicant documentation of certification.

(e) Any person who begins employment on or after the
effective date of this article as a law-enforcement officer is
certifiable as having met the minimum entry level law-enforce-
ment training program requirements and is exempt from attend-
ing a law-enforcement training academy if the person has
satisfactorily completed a course of instruction in law-enforce-
ment equivalent to or exceeding the minimum applicable law-
enforcement training curricula promulgated by the governor's
committee. To receive certification, the person shall make
written application within ninety calendar days following the
commencement of employment to the governor's committee
requesting certification. The application shall include a
notarized statement of the applicant's satisfactory completion
of the course of instruction in law enforcement, a notarized
transcript of the applicant's relevant scholastic records, and
a notarized copy of the curriculum of the completed course
of instruction. The governor's committee shall review the
application and, if it finds the applicant has met the re-
quirements for certification, shall forward to the applicant
documentation of certification.

(f) Nothing in this section may be construed as pro-
hibiting the chief executive of any West Virginia law-enforce-
ment agency from requiring law-enforcement officers in his
organization to satisfactorily complete a course of law-enforce-
ment instruction which exceeds the minimum entry level law-
enforcement training curriculum promulgated by the governor's
committee.

(g) The requirement of this section for qualification,
training and certification of law-enforcement officers shall
not be mandatory during the two years next succeeding the
I 00 effective date of this article for the law-enforcement of­
I 01 ficers of a law-enforcement agency which employs a civil
I 02 service system for its law-enforcement personnel, nor shall
I 03 such provisions be mandatory during the five years next
I 04 succeeding the effective date of this article for law-enforce­
I 05 ment officers of a law-enforcement agency which does not
I 06 employ a civil service system for its law-enforcement per­
I 07 sonnel: Provided, That such requirements shall be mandatory
I 08 for all such law-enforcement officers until their law-enforce­
I 09 ment officials apply for their exemption by submitting a written
I 10 plan to the governor's committee which will reasonably assure
I 11 compliance of all law-enforcement officers of their agencies
I 12 within the applicable two or five year period of exemption.

(h) Any person aggrieved by a decision of the governor's
I 13 committee made pursuant to this article may contest such de­
I 14 cision in accordance with the provisions of article five,
I 15 chapter twenty-nine-a of this code.

§30-29-6. Review of certification.

Certification of each West Virginia law-enforcement officer
shall be reviewed annually following the first certification and
until such time as the officer may achieve exempt rank. Certi­
fication may be revoked or not renewed if any law-enforcement
officer fails to attend annually an in-service approved law­
forcement training program, or if a law-enforcement officer
achieving exempt rank fails to attend biennially an approved
in-service supervisory level training program.

§30-29-7. Compliance.

The governor's committee and the executive of each West
Virginia law-enforcement agency shall ensure employee com­
pliance with this article.

§30-29-8. Agreements to reimburse employers for wages and
expenses of employees trained but not continuing
employment.

A West Virginia law-enforcement agency may elect to pay
to employees compensation, including, without limitation,
wages, salaries, benefits, tuition, or expenses for the employees'
attendance at a law-enforcement training academy. In con-
sideration therefor, the agency may require of its employees by
written agreement entered into with each of them in advance
of such attendance at a training academy that, if an employee
should voluntarily discontinue employment anytime within
one year immediately following completion of the training cur-
iculum, he or she shall be obligated to pay to such agency a
pro rata portion of the sum of such compensation equal to that
part of such year which the employee has chosen not to remain
in the employ of the agency.

CHAPTER 183
(S. B. 81—By Mr. Jones, Mr. Moreland, Mr. Galperin and Mr. Huffman)
[Passed April 9, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal article eleven, chapter fifty-one; to amend and
reenact sections one-a and four, article five, chapter
twenty-seven; to amend and reenact chapter twenty-nine by
adding thereto a new article, designated article twenty-one; to
amend and reenact section one, article five, chapter forty-nine;
to amend and reenact section three, article four, chapter fifty;
to amend and reenact section four, article four-a, chapter
fifty-three; and to amend and reenact section one, article three
and section twenty-two, article twelve of chapter sixty-two, all
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; all relating to the establishment of a
public defender system for the representation of indigent
persons; amending certain code sections to reflect the repeal of
article eleven, chapter fifty-one of the code and resultant code
references; setting forth legislative findings and a declaration
of purpose; definition establishing the West Virginia public
legal services council; defining the membership of the council
and providing for the method of appointment, terms of office,
and the status of members of the council; providing for
selection of a chairman of such council; defining a quorum;
allowing for the removal and resignation of members of the
council; requiring quarterly meetings; providing for
compensation of members; prohibiting participation of
members in certain instances; describing the purpose and duties of the council; describing the position of executive director; providing for the hiring of employees; compensation of executive director and employees; setting forth the powers, duties, and limitations of the council; establishing a criminal law research center, an accounting and auditing division, and an appellate advocacy division; describing the functions of the criminal law research center; creating public defender corporations and providing for the activation of such corporations; establishing regional and local panels of attorneys and describing the method of appointment and order of appointing the public defender office, panel attorneys, and others; requiring notification of intent to apply for financial assistance in certain instances; providing for plans for legal representation and the form and content of such plans; requiring the review of plans by circuit judges; describing the responsibilities of the council upon receipt of applications; providing for approval of program and budget and funding by loans and grants; requiring records and submission of vouchers; describing the method of payment, rates of compensation and limits thereon; describing the contents of vouchers; limiting the use of funds; describing the board of directors of a public defender corporation and the appointment of members thereof; providing for the composition of the board and meetings and duties thereof; allowing expenses of members to be paid; establishing a method of determining maximum income levels and other eligibility guidelines; providing for the use of form affidavits; allowing inquiry by the court and denial of services in some instances; providing for repayment; limiting remedies against affiants; setting forth when public defenders and assistant public defenders are prohibited from outside practice of law; requiring certain records and reports; and providing for audits of public defender corporations.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter fifty-one be repealed; that sections one-a and four, article five, chapter twenty-seven be amended and reenacted; that chapter twenty-nine be amended by adding thereto a new article, designated article twenty-one; that section one, article five, chapter forty-nine be amended and reenacted; that section three, article four, chapter fifty be amended and reenacted;
that section four, article four-a, chapter fifty-three be amended and reenacted; that section one, article three and section twenty-two, article twelve, chapter sixty-two be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

Chapter
27. Mentally Ill Persons.
29. Miscellaneous Boards and Officers.
50. Magistrate Courts.
53. Extraordinary Remedies.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

1 If, in any case, the prosecuting attorney and his assistants in 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 twenty-one, chapter twenty-nine of this code. Compensation shall be paid out of the “mental hygiene fund” provided for in section four of this article.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) Involuntary commitment.—Except as provided in section three of this article, no individual shall be involuntarily 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 individual, 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 representative.

(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 certificate; 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 retarded 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 hospitalized, 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 commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith 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 rights 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 (3) 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 directed 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 psychologist 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 involuntary 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 commitment 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; payment 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 twenty-one, chapter twenty-nine of this code.
161 (i) **Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.**

162 (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.

167 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

170 (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.

182 (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.

191 (j) **Requisite findings by the court.**

192 (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 hearing is for a temporary observation period, the circuit court or 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.

(4) 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.

(l) 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 commissioner 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 commitment 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 commissioner 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 individual 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 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.

(q) Report to the director of health.

(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.

(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.

(r) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.

(1) The state shall pay the commissioner's fee and such court reporter fees as are not paid and reimbursed under article twenty-one, chapter twenty-nine of this code 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."

(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.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC LEGAL SERVICES.

§29-21-1. Legislative findings; purpose.
§29-21-3. Establishment of West Virginia public legal services council.
§29-21-4. Council—Membership; chairman; meetings; compensation; conflicts of
interest.
§29-21-5. Purpose and duties of council.
§29-21-6. Executive director of council; staff.
§29-21-8. Criminal law research center established; functions.
§29-21-11. Public defender corporations—Intent to apply for funding.
§29-21-12. Public defender corporations—Funding applications; legal representation
plans; review.
§29-21-13. Public defender corporation funding applications—Duties of council.
§29-21-14. Council—Approval of public defender corporation funding applications;
funding and compensation of corporations and panel attorneys.
§29-21-15. Limitation on use of funds; exceptions.
§29-21-17. Eligibility for public legal representation.

§29-21-1. Legislative findings; purpose.

1 The Legislature finds and declares that in certain
2 proceedings the state is required to provide high quality legal
3 assistance to indigent persons who would be otherwise
4 unable to afford adequate legal counsel; that providing legal
5 representation to those who face an economic barrier to
6 adequate legal counsel will serve the ends of justice in
7 accordance with rights and privileges guaranteed to all
citizens by the constitution of the United States of America
and the constitution of the state of West Virginia; that the
availability of quality legal assistance reaffirms the faith of
our citizens in our government of laws; that the present
system which utilizes appointed counsel is not operating
satisfactorily in some areas of this state and the Legislature is
presently unable to determine what system or systems will
provide the most efficient means for providing legal
representation; that there is a need to explore alternative
methods of delivering legal assistance, including the use of
salaried public defenders complemented by private panel
attorneys; that innovative programs and pilot projects as well
as a continuation of the present appointed counsel system are
necessary in separate areas of the state to provide information
and experience upon which to base future legislative action.


As used in this article:

(1) “Council” or “legal services council” means the West
Virginia public legal services council established under this
article;

(2) “Eligible client” means any person who is accused of a
serious crime, has been convicted of such crime, is a party in a
juvenile court proceeding, or is the respondent in a
commitment proceeding, and who is to be afforded legal
representation under the provisions of this article;

(3) “Legal representation” or “legal assistance” means the
provision of any legal services consistent with the purposes
and provisions of this article;

(4) “Outside practice of law” means the provision of legal
assistance to a client who is not entitled to receive legal
assistance from the employer of the attorney rendering
assistance, but does not include, among other activities,
teaching, consulting, or performing evaluation;

(5) “Public defender” means the staff attorney employed
on a full-time basis by a public defender corporation who, in
addition to his direct representation of eligible clients, has
administrative responsibility for the operation of the public
defender corporation: Provided, That the public defender
may be a part-time employee if the board of directors of the
public defender corporation finds that there are extraordinary circumstances wherein efficient operation requires that no staff attorneys should be employed on a full-time basis, and the council approves such part-time employment;

(6) "Assistant public defender" means a staff attorney hired by the public defender to provide direct representation of eligible clients, and whose salary and status as a full-time or part-time employee are fixed by the board of directors of the public defender corporation;

(7) "Public defender corporation" or "public defender office" means a corporation created under section nine of this article for the sole purpose of providing legal representation to eligible clients;

(8) "Serious crime" means:

(a) A felony;

(b) A misdemeanor or offense, the penalty for which involves the possibility of confinement or a fine of more than five hundred dollars, or any other offense of a criminal nature which, in the opinion of the court, because of the complexity of the matter, or the youth, inexperience, or mental capacity of the accused, requires representation of the accused by an attorney;

(c) An act which, except for the age of the person involved, would otherwise be a serious crime; and

(d) Any other charge, including revocation of probation or parole, which involves the possibility of confinement in a penal institution.

§29-21-3. Establishment of West Virginia public legal services council.

There is hereby created the West Virginia public legal services council, for the purpose of facilitating required legal representation of indigent persons. The council shall have primary responsibility to administer, coordinate and evaluate programs for the delivery of legal assistance to eligible clients, to monitor the progress of various delivery systems, and to recommend improvements. The council shall maintain its office at the state capital.
§29-21-4. Council—Membership; chairman; meetings; compensation; conflicts of interest.

(a) The council shall consist of sixteen members appointed by the governor, by and with the advice and consent of the Senate, one to be appointed from each state senatorial district, exclusive of the seventeenth senatorial district. At least six shall be members of the bar of the supreme court of appeals, at least six shall not be attorneys, and none shall be a full-time employee of the state. The membership of the council shall be appointed so as to be generally representative of the organized bar, panel attorneys, public defenders and assistant public defenders, and the general public. No more than nine members of the council shall be members of the same political party.

(b) The term of office of each member of the council shall be four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

(c) The members of the council shall not, by reason of such membership, be deemed officers or employees of the state of West Virginia.

(d) The governor shall select from among the voting members of the council a chairman.

(e) Eight members shall constitute a quorum to conduct business.

(f) When a member shall fail to appear at three consecutive meetings of the council or at one half of the meetings held during a two-year period, the secretary shall notify the member and the governor of such fact. A member may not be removed unless notice of the basis of removal has been given to such member at least thirty days before an action is taken concerning his removal and the member has been afforded the opportunity to contest his removal by making written submissions to the governor.

(g) A member may resign at any time by giving written notice of his resignation to the governor and to the executive director of the council.
(h) The council shall meet at least four times during each calendar year at the call of the chairman. The council shall also convene upon the call of a majority of the members.

(i) Each member shall receive a salary of fifty dollars per meeting day as compensation and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties under this article.

(j) No member of the council may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

§29-21-5. Purpose and duties of council.

(a) The council shall have as its principal purpose the development of concepts for improving programs within the state for the legal representation of eligible clients.

(b) The council shall:

(1) Provide advice to the executive director of the public legal services council;

(2) Review the administrative operations of the council;

(3) Evaluate proposed plans of public defender corporations for the provision of legal representation and the implementation of such plans;

(4) Provide advisory opinions to the executive director on potential conflicts of interest in the representation of indigent persons;

(5) Recommend improvements in the various systems utilized to provide legal representation to eligible clients;

(6) Review the operations of alternative systems and compare and evaluate the performance and cost of the various alternative systems.

§29-21-6. Executive director of council; staff.

(a) The governor shall appoint the executive director of the council, who shall serve at the will and pleasure of the governor. The executive director shall be a qualified
administrator as determined by the governor, and may be a
member of the bar of the supreme court of appeals. In
addition to the executive director there shall be such other
employees hired by the executive director as the council
determines to be necessary. The executive director shall have
such authority and perform such duties as may be required or
necessary to effectuate this article. The executive director
shall provide supervision and direction to the other
employees of the council in the performance of their duties.

(b) The executive director and employees of the council
shall be compensated at rates determined by the council:
Provided, That the annual salary of the executive director
shall not be more than the annual salary of the attorney
general.


(a) Consistent with the provisions of this article, the
council is authorized to make loans and grants to and
contracts with public defender corporations and with
individuals, partnerships, firms, corporations, and nonprofit
organizations, for the purpose of providing legal
representation to eligible clients under this article, and to
make such other loans, grants and contracts as are necessary
to carry out the purposes and provisions of this article.

(b) The council is authorized to accept, and employ or
dispose of in furtherance of the purposes of this article, any
money or property, real, personal, or mixed, tangible or
intangible, received by gift, devise, bequest, or otherwise.

(c) The council shall establish and the executive director
or his designate shall operate a criminal law research center
as provided for in section eight of this article, and through
such center shall undertake directly, or by grant or contract,
to serve as a clearinghouse for information, to provide
training and technical assistance relating to the delivery of
legal representation, and to engage in research, except that
broad general legal or policy research unrelated to direct
representation of eligible clients may not be undertaken by
grant or contract.

(d) The council shall establish and the executive director
or his designate shall operate an accounting and auditing
division to require and monitor the compliance of public
defender corporations and their employees with the provisions of this article. This division shall receive all plans and proposals for loans, grants and contracts, and all requisitions for payment, and shall review the same. All such plans and proposals shall be approved or disapproved by the division on the basis of conformity to the provisions of this article, and a recommendation shall then be made to the executive director and the advisory board. After review by the division, the executive director shall draw requisitions on the state auditor for payment to public defender corporations and others, upon proper application under the provisions of this article. The division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection, or monitoring of public defender corporations and other grantees, contractors, or persons or entities receiving financial assistance under this article, and shall further carry out the council's responsibilities for records and reports as set forth in section nineteen of this article.

(e) The council shall establish and the executive director or his designate shall operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals. The executive director or a person designated by him shall be the director of the appellate advocacy division and shall represent eligible clients in only those instances where the trial attorney or other local counsel is unwilling or unable to serve as appellate counsel. The executive director is empowered to select and employ staff attorneys to perform the duties prescribed by this subsection, the number of such staff attorneys being fixed by the board. The appellate division shall have its own budget as determined appropriate by the council and shall maintain vouchers and records for representation of eligible clients, for record purposes only.

§29-21-8. Criminal law research center established; functions.

(a) Within the council, there shall be a division known as the criminal law research center which may:

(1) Undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research materials;

(2) Prepare and distribute a criminal law manual and other
materials and establish and implement standard and
specialized training programs for attorneys practicing
criminal law;

(3) Provide and coordinate continuing legal educational
programs and services for attorneys practicing criminal law;

(4) Prepare, supplement and disseminate indices and
digests of decisions of the West Virginia supreme court of
appeals and other courts, statutes and other legal authorities
relating to criminal law.

(b) The services of the criminal law research center shall
be offered at reasonable rates or by subscription, and such
service shall be provided to prosecuting attorneys and their
professional staffs, panel attorneys, and private attorneys
engaged in the practice of criminal law on the same basis as
such services are provided to public defender corporations,
public defenders and assistant public defenders.


(a) In each judicial circuit of the state, there is hereby
created a public body corporate and politic to be known as
the "public defender corporation" of the circuit: Provided,
That there shall be but one such public defender corporation
designated for the twenty-third and thirty-first judicial
circuits, which shall serve both circuits. The purpose of such
public defender corporations is to provide legal
representation in the respective circuits in accordance with
the provisions of this article. Except as provided in
subsection (b) of this section, a public defender office created
by this subsection shall not be activated so as to transact any
business or exercise its powers under this article before the
first day of April, one thousand nine hundred eighty-two, and
until or unless the judge of a single judge circuit or the chief
judge of a multi-judge circuit or a majority of the active
members of the bar in the circuit, shall determine at any time
hereafter that there is a need in the circuit to activate the
public defender corporation, shall certify such fact to the
council in writing, and shall have the activation of the office
recommended by the council and approved by the executive
director.
(b) The public defender corporations are hereby activated in the first, second, third, seventh, eighth, ninth, eleventh, thirteenth, fourteenth, fifteenth, twenty-third and thirty-first combined, twenty-fifth, twenty-eighth and thirtieth judicial circuits.

(c) Public defender offices activated prior to the first day of July, one thousand nine hundred eighty-two, shall be structured so as to provide legal representation through salaried staff attorneys, complemented by panels of private attorneys-at-law. On and after the first day of July, one thousand nine hundred eighty-two, public defender offices activated pursuant to this section shall not be confined to a particular method of providing legal representation, but may submit for consideration and approval by the council, programs and plans which represent novel or innovative approaches for the provision of legal representation for eligible clients.

(d) On and after the first day of July, one thousand nine hundred eighty-two, public defender corporations may merge to form multi-circuit or regional public defender corporations. Applications for mergers shall be subject to the review procedures set forth in sections eleven and twelve of this article.

\section*{\textbf{29-21-10. Panel attorneys.}}

(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who shall be available to serve as counsel for eligible clients. The court shall appoint one or more panel attorneys in accordance with the provisions of this article, to represent eligible clients in situations where the public defender corporation has not been activated or a public defender is not available to represent such eligible clients.

(b) An attorney-at-law may become a panel attorney and have his name placed on the regional or local panel, or both, to serve as counsel for eligible clients, by informing the court that he is willing to serve as such. A prospective panel attorney shall inform the court in writing; on forms provided by the executive director, whether or not he will accept appointments generally, and if not, which types of cases described in section fifteen of this article he will not accept.
17 appointment in. The attorney shall also indicate whether or
18 not he will accept appointment in adjoining circuits and, if so,
19 the circuits in which he will accept appointments. An
20 agreement to accept cases generally or certain types of cases
21 particularly shall not prevent a panel attorney from declining
22 an appointment in a specific case.
23
24 (c) In all cases where an attorney-at-law is required to be
25 appointed for an eligible client, the appointment shall be
26 made by the circuit judge. In circuits where the public
27 defender corporation is in operation, the judge shall appoint
28 the public defender office. If the appointment of the public
29 defender or his assistant is not appropriate, the court shall
30 appoint a panel attorney from the local panel. If there is no
31 local panel attorney available, the judge shall appoint a panel
32 attorney from the regional panel. If there is no regional panel
33 attorney available, the judge may appoint a public defender
34 from an adjoining circuit when such public defender agrees
35 to the appointment. In circuits where the public defender
36 corporation is not activated, the judge shall first refer to the
37 local panel and then to the regional panel in making
38 appointments, and if an appointment cannot be made from
39 the panel attorneys, the judge may appoint the public
40 defender of an adjoining circuit when such public defender
41 agrees to the appointment. In any circuit, when there is no
42 public defender or assistant public defender, local panel
43 attorney, regional panel attorney, or public defender of an
44 adjoining circuit available, the judge may appoint a qualified
45 private attorney to provide representation, and such private
46 attorney shall be treated as a panel attorney for that specific
47 case. In any given case, the appointing judge may alter the
48 order in which he considers attorneys available for
49 appointment if, in his discretion, the case requires particular
50 knowledge or experience on the part of the attorney to be
51 appointed.

§29-21-11. Public Defender Corporations—Intent to apply for
funding.

1 (a) Any public defender corporation activated after the
2 first day of July, one thousand nine hundred eighty-two, and
3 undertaking to apply to the public legal services council for
4 financial assistance for a novel or innovative program to
5 provide legal representation and any public defender
corporation proposing a major substantive modification to an existing program is required to notify the council and the circuit judges in the circuit in which the program will deliver legal representation of the intent to apply for such assistance or modification. Such notice shall be given at least fifteen days prior to the filing of an application or a proposal for modification.

(b) Notifications shall include a summary description of the proposed program. The summary description shall contain the following information:

(1) The identity of the applicant;

(2) The geographical location of the proposed program;

(3) A brief description of the proposed program, general size or scale, estimated cost, or other characteristics which will enable the circuit court to determine how the system for representation of indigents within the circuit may be affected by the proposed program; and

(4) The estimated date the public defender corporation expects to formally file an application or modification proposal.

§29-21-12. Public defender corporations—Funding applications; legal representation plans; review.

(a) Any public defender corporation wishing to take advantage of state financial assistance through the council must submit an application to the council in the form of a plan for providing legal representation to eligible clients.

(b) The plan, which is to be submitted in a form prescribed by the executive director, shall contain a specific description of the public defender corporation's program, the plans and policies to be followed in carrying out the program, and other information prescribed by the executive director. The plan shall include, but not be limited to, the following:

(1) Information exhibiting compliance with the requirements of this article;

(2) A projection of the annual caseload to be handled by the public defender corporation, describing the methods to be used to meet objectives;
(3) A description of the staff required for adequate 
administration of the plan; and

(4) A description of the facilities and equipment required 
to provide adequate legal representation of eligible clients.

(c) All applications for state financial assistance through 
the council under the provisions of this article must be 
submitted to the circuit judges of the circuit for review prior 
to their submission to the council.

(d) Public defender corporations will include with the 
completed application as submitted to the agency:

(1) All comments and recommendations made by the 
circuit judges, along with a statement that such comments 
have been considered prior to submission of the application;
or

(2) Where no comments have been received from circuit 
judges, a statement that the procedures outlined in this 
section have been followed and that no comments or 
recommendations have been received.

(e) Applications for annual renewal or continuation grants 
are subject to review upon request of the circuit judges; and
applications not submitted to or acted upon by the council 
within six months after completion of the circuit judges' 
review are subject to re-review upon request.

(f) Comments and recommendations made by a circuit 
judge with respect to any program are for the purpose of 
assuring maximum consistency of such programs with local 
needs for legal representation of indigents.

(g) If notification is required under section eleven of this 
article, a circuit judge will complete review of a program 
notification within fifteen days after receipt by the judge of 
the notification. Where the public defender corporation has 
not received a response to the notification from a circuit 
judge within the fifteen-day period, the public defender 
corporation may consider the judge to have waived his 
opportunity to review and comment on the proposed 
program or program modification. If a public defender 
corporation submits a completed application to a circuit 
judge during the fifteen-day notification review period, the
judge will complete review within fifteen days plus the number of days remaining in the fifteen-day notification period. If a public defender corporation submits to a circuit judge a completed application without a prior notification, the judge will complete review of the application within thirty days.

(h) In cases where notification is not required, the public defender corporation may expect that a circuit judge will complete review of a completed application within fifteen days.

(i) If review of an application is not completed within the time periods prescribed in this section the public defender corporation may consider that the application has been favorably reviewed and may submit the application to the public legal services council for consideration.

§29-21-13. Public defender corporation funding applications—Duties of council.

(a) If the council receives an application that does not carry evidence that appropriate circuit judges have been given an opportunity to review the application, the council shall return the application to the public defender corporation with instructions to fulfill the requirements of sections eleven and twelve of this article.

(b) The council must notify the circuit judges within seven working days of any major action taken on any application that has been reviewed by such judges. Major actions will include program approvals, rejections, returns for amendment, deferrals or withdrawals.

(c) Where a judge has recommended against approval, or has recommended approval only with specific and major substantive changes, and the council approves the application substantially as submitted, the council will provide the judge with, along with the approval notice, an explanation therefor.

§29-21-14. Council—Approval of public defender corporation funding applications; funding and compensation of corporations and panel attorneys.

(a) Upon approval of a program application by the
2 executive director, the amounts of the approved budget and
3 the loans and grants included therein shall be set forth in an
4 approval notice. The total cost to the council will not exceed
5 the amount set forth in the approval notice and the council
6 shall not be obligated to reimburse the public defender
7 corporation for costs incurred in excess of such amount
8 unless and until a program modification has been approved
9 in accordance with the provisions of this article, revising the
10 total costs of the program.

11 (b) Initial funding of a public defender corporation's
12 program shall be in the form of interest-free loans made by
13 the council to the public defender corporation:

14 (1) An equipment loan in a requested amount of up to five
15 thousand dollars plus such additional amount above five
16 thousand dollars as may be approved by the council; and

17 (2) An operational loan not to exceed the projected
18 operational costs for the first six months of program
19 operation: Provided, That upon subsequent application by
20 the public defender corporation, the operational loan shall be
21 increased to an amount not exceeding the projected
22 operational costs for the full twelve-month period of program
23 operation. Operational loan funds shall be forwarded to the
24 public defender corporation in quarterly installments.

25 (c) All public defender corporations shall maintain
26 detailed and accurate records of the time expended by public
27 defenders and assistant public defenders and expenses
28 incurred on behalf of eligible clients. Upon completion of
29 each case, exclusive of appeal, the public defender
30 corporation shall submit to the appointing court a voucher for
31 services which meets the requirements of subsection (h) of
32 this section. After approval by the court, the court shall
33 forward such voucher to the council, with an order of the
34 court approving payment of the amount of the voucher or of
35 such lesser sum to which the court shall believe the public
36 defender corporation to be entitled. Upon receipt of an
37 approved voucher, the council shall credit fifty percent of the
38 face amount of the voucher as a payment on outstanding
39 loans of the public defender corporation: Provided, That
40 upon request of the public defender corporation, a larger
41 percentage may be credited against such loans, or, upon
request of the public defender corporation and the approval of the executive director, a smaller percentage may be so credited. All amounts reflected by vouchers and not credited to loans shall be tabulated, and at the end of each month, the executive director shall forward to the public defender corporation a grant equal to such monthly total. The total amount of loan credits and monthly grants shall not exceed the total budget approved for the program.

(d) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services which meets the requirements of subsection (h) of this section. After approval by the court, the court shall forward such voucher to the council, with an order of the court approving payment of the amount of the voucher or of such lesser sum to which the court shall believe the panel attorney to be entitled. The executive director shall make payment to the panel attorney.

(e) In each case in which a public defender corporation or a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, compensation for actual and necessary services rendered shall be at the following rates:

(1) For work performed out of court, compensation shall be at the rate of twenty dollars per hour, itemized to the nearest quarter-hour. Out-of-court work shall include, but not be limited to, travel, interviews of clients or witnesses, preparation of pleadings, and pre-hearing or pre-trial research.

(2) For work performed in court, compensation shall be at the rate of twenty-five dollars per hour, itemized to the nearest quarter-hour. In-court work shall include, but not be limited to, all time spent awaiting hearing or trial if the presence of the attorney is required at the time.

(3) Expenses incurred in providing legal representation, including, but not limited to, necessary expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses shall be reimbursed to a maximum of five hundred dollars unless the court, for good cause shown, shall
have given advance approval to incur expenses for a larger
sum.

(f) The maximum amount of compensation for
out-of-court and in-court work under subsection (e) of this
section shall be one thousand dollars: Provided, That if the
eligible client is charged with a felony for which a penalty of
life imprisonment may be imposed, upon being advised by
counsel that the time expended has reached the one thousand
dollar maximum, the court may approve additional
compensation for further work at one half the rates provided
in subsection (e).

(g) For purposes of compensation under this section, an
appeal to the supreme court of appeals from a circuit court
shall be considered a separate case.

(h) Vouchers submitted under this section shall
specifically set forth the nature of the service rendered, the
stage of proceeding or type of hearing involved, and the date
and place the service was rendered. If the charge against the
eligible client for which services were rendered is one of
several charges involving multiple warrants or indictments,
the voucher shall indicate such fact and sufficiently identify
the several charges so as to enable the court to avoid a
duplication of compensation for services rendered. The
voucher shall indicate whether the services were rendered by
a public defender corporation, a local panel attorney, a
regional panel attorney, or such other private attorney as may
have been appointed. A voucher submitted to the council
which is not in conformity with the record-keeping and
compensation provisions of this article may be returned to
the court for further review.

§29-21-15. Limitation on use of funds; exceptions.

1. (a) Funds made available by the council to public
defender corporations under this article, either by loan, grant,
or contract, shall be used to provide legal representation for
persons accused or convicted of serious crimes, except that
funds may be used for representation of indigent persons in
the following proceedings:

1. (1) Juvenile proceedings, including child neglect and
abuse proceedings;
(2) Mental hygiene proceedings;
(3) Habeas corpus actions brought for the purpose of challenging the validity of confinement arising out of proceedings involving serious crimes, juvenile proceedings, or mental hygiene proceedings;
(4) Prohibition actions brought for the purpose of challenging the excessive exercise of authority in a criminal, juvenile, or commitment proceeding by a lower tribunal; and
(5) Mandamus actions brought for the purpose of commanding action applicable to criminal, juvenile, or commitment proceedings.

(b) Funds received from another source other than the council for the provision of legal representation shall not be used by a public defender corporation for purposes prohibited by this article.


(a) The governing body of each public defender corporation shall be a board of directors consisting of persons who are residents of the area to be served by the public defender corporation.

(1) In multi-county circuits, the county commission of each county within the area served shall appoint a director, who shall not be an attorney-at-law. The president of each county bar association within the area served shall appoint a director, who shall be an attorney-at-law: Provided, That in a county where there is not an organized and active bar association, the circuit court shall convene a meeting of the members of the bar of the court resident within the county and such members of the bar shall elect one of their number as a director. The governor shall appoint one director, who shall serve as chairman, who may, but need not be, an attorney-at-law, unless such appointment would result in there being an even number of directors, in which event the governor shall appoint two directors, one of whom may be an attorney-at-law.

(2) In single-county circuits, the manner of selecting directors shall be the same as that described in subdivision (1) of this subsection, except that the county commission shall
23 appoint two directors rather than one, and the bar shall
24 appoint two directors rather than one.

25 (b) The board of directors shall have at least four meetings
26 a year. Timely and effective prior public notice of all meetings
27 shall be given, and all meetings shall be public except for
28 those concerned with matters properly discussed in
29 executive session.

30 (c) The board of directors shall establish and enforce
31 broad policies governing the operation of the public defender
32 corporation but shall not interfere with any attorney's
33 professional responsibilities to clients. The duties of the
34 board of directors shall include, but not be limited to, the
35 following:

36 (1) Appointment of the public defender and determination
37 of the number of assistant public defenders as may be
38 necessary to enable the public defender corporation to
39 provide legal representation to eligible clients; and

40 (2) Approval of the public defender corporation's budget
41 and the fixing of professional salaries; and

42 (3) Renewal of the employment contract of the public
43 defender on an annual basis except where such renewal is
44 denied for cause: Provided, That the board of directors shall
45 have the power at any time to remove the public defender for
46 misfeasance, malfeasance or nonfeasance;

47 (d) To the extent that the provisions of chapter thirty-one
48 of this code regarding nonprofit corporations are not
49 inconsistent with this article, the provisions of such chapter
50 shall be applicable to the board of directors of the public
51 defender corporation.

52 (e) While serving on the board of directors, no member
53 shall receive compensation from the public defender
54 corporation, but a member may receive payment for normal
55 travel and other out-of-pocket expenses required for
56 fulfillment of the obligations of membership.

§29-21-17. Eligibility for public legal representation.

1 (a) The council shall establish, in consultation with the
2 commissioner of the department of finance and
administration, with the chief justice of the supreme court of appeals, and with the judges of the several circuits, maximum annual income levels for individuals eligible for legal representation under this article. The council shall consider such factors as family size, urban and rural differences, substantial cost-of-living variation, and the cost of available private representation.

(b) In addition to the maximum annual income level for an area established under subsection (a) of this section, a court shall consider other relevant factors before determining whether a person is eligible to receive legal representation under the provisions of this article. A person whose income exceeds the maximum annual income level may have counsel appointed if the person’s circumstances require that eligibility be allowed on the basis of one or more of the following factors:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid net assets and other assets which may reasonably be available for the employment of private counsel;

(3) Fixed debts and obligations, including federal, state and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought; and

(7) The consequences for the individual if legal assistance is denied.

(c) The council shall adopt a simple form affidavit to be completed by persons seeking legal representation, for use by courts to determine eligibility. The information obtained shall be preserved by the court for audit by the council. If there is substantial reason to doubt the accuracy of information in the affidavit, the circuit court shall make appropriate inquiry upon the record to determine whether a
person is an indigent person entitled to all or any of the legal assistance sought and may deny all or any part of such services to the affiant which the court finds to be within the financial resources of the affiant and may revoke any prior appointment of counsel which the court determines to have been improvidently made. No circuit court shall deny all or any part of the services requested by the affiant unless the court shall determine upon the record that such service or services, including counsel, are available to the person seeking them and are within the financial resources of such person. Upon the determination that appointment of counsel previously made should be revoked, or that further provision of any other service should be denied, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to such appointment for services already rendered and any other officer of the court having previously rendered such services shall likewise be entitled to such compensation, if any, for services already rendered as law may provide.

(d) Subject to such rules as the supreme court of appeals shall promulgate, the circuit court shall have plenary power in every case in which services are rendered to an indigent person, whether or not services are thereafter denied under this section, to make such order for the repayment of costs and compensation for services granted to such person, either as condition of probation or otherwise, as the court may determine to be reasonable given the financial circumstances of the affiant.

(e) The making of an affidavit subject to inquiry under this section shall not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered: Provided, That a person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.


(a) No full-time public defender or full-time assistant public defender shall engage in any outside practice of law except as provided in this section.
(b) A board of directors may permit a full-time public
defender or full-time assistant public defender to engage in
the outside practice of law for compensation if:

(1) The public defender or assistant public defender is
newly employed and has a professional responsibility to close
cases from a previous law practice, and does so as
expeditiously as possible; or

(2) The public defender or assistant public defender is
acting pursuant to an appointment made under a court rule or
practice of equal applicability to all attorneys in the
jurisdiction, and remits to the public defender corporation all
compensation received.

(c) A board of directors may permit a public defender or
assistant public defender to engage in uncompensated
outside practice of law if the public defender or assistant
public defender is acting:

(1) Pursuant to an appointment made under a court rule or
practice of equal applicability to all attorneys in the
jurisdiction; or

(2) On behalf of a close friend or family member; or

(3) On behalf of a religious, community or charitable

group.


(a) The council is authorized to require such reports as it
deems necessary from any public defender corporation
receiving financial assistance under this article regarding
activities carried out pursuant to this article.

(b) The council is authorized to prescribe the keeping of
records with respect to funds provided by the council and
shall have access to such records at all reasonable times for
the purpose of ensuring compliance with the terms and
conditions upon which financial assistance was provided.

(c) The council shall publish an annual report which shall
be filed by the council with the governor and the Legislature
on or before the thirty-first day of January of each year.

(d) Copies of all reports pertinent to the evaluation,
inspection, or monitoring of any public defender corporation receiving financial assistance under this article shall be submitted on a timely basis to such public defender corporation and shall be maintained by the council for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the agency may establish.


(a) The accounts of each public defender corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by the state tax commissioner.

(b) The audits shall be conducted at the place or places where the accounts of the public defender corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the public defender corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(c) The report of the annual audit shall be filed with the council and shall be available for public inspection during business hours at the principal office of the public defender corporation. The report of each such audit shall be maintained for a period of at least five years at the office of the council.


Any attorney who shall provide legal representation under the provisions of this article following his appointment by a circuit court, and whose only compensation therefor is paid under the provisions of this article, shall be immune from liability arising from his services in the same manner and to the same extent that prosecuting attorneys are immune from liability.
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

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

(a) The circuit court of the county shall have original jurisdiction in proceedings brought under this article.

If during a criminal proceeding against a person in any court, it shall be ascertained or shall appear that the person is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court, and the circuit court shall assume jurisdiction of the case in the same manner as cases originally instituted in the circuit court by petition: Provided, That for violation of a traffic law of West Virginia, magistrate courts shall have concurrent jurisdiction with the circuit court, and persons under the age of eighteen years shall be liable for punishment for violation of such traffic laws in the same manner as adults except that magistrate courts shall have no jurisdiction to impose a sentence of confinement for the violation of traffic laws.

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

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

(c) The child shall have the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the child, parent or custodian executes an affidavit showing that he cannot pay for an attorney appointed by the court or referee, the court shall
appoint counsel, to be paid as provided for in article twenty-one, chapter twenty-nine of this code.

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

Except as herein modified, at all adjudicatory hearings, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports based upon hearsay. Unless otherwise specifically provided in this chapter, all procedural rights afforded adults in criminal proceedings shall be applicable. Extra-judicial statements other than res gestae statements by a child under sixteen years of age, made to law-enforcement officials or while the child is in custody and outside the presence of the child’s counsel shall not be admissible. A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings. At the conclusion of any hearing, the court shall make findings of fact and conclusions of law, and the same shall appear of record.

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

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-3. Appointment of counsel in criminal proceeding.

In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the magistrate shall forthwith advise a defendant of his right to counsel and his right to have counsel appointed if such defendant cannot afford to retain counsel. In the event a defendant requests that counsel be appointed and executes an affidavit that he is unable to afford counsel, the magistrate shall stay further proceedings and shall request the judge of
the circuit court, or the chief judge thereof if there is more
than one judge of the circuit court, to appoint counsel. Such
judge shall thereupon appoint counsel. If there is no judge
sitting in the county at the time of the request then the clerk
of the circuit court shall appoint counsel from a list of
attorneys in accordance with the rules established by such
judge of the circuit court. Counsel shall be paid for his
services and expenses in accordance with the provisions of
article twenty-one, chapter twenty-nine of this code.

CHAPTER 53. EXTRAORDINARY REMEDIES.

ARTICLE 4A. POST-CONVICTON HABEAS CORPUS.

§53-4A-4. Inability to pay costs, etc.; appointment of counsel;
obtaining copies of record or records in criminal
proceedings or in a previous proceeding or
proceedings to secure relief; payment of all costs
and expenses; adjudging of costs.

(a) A petition filed under the provisions of this article may
allege facts to show that the petitioner is unable to pay the
costs of the proceeding or to employ counsel, may request
permission to proceed in forma pauperis and may request the
appointment of counsel. If the court to which the writ is
returnable (hereinafter for convenience of reference referred
to simply as "the court," unless the context in which used
clearly indicates that some other court is intended) is satisfied
that the facts alleged in this regard are true, and that the
petition was filed in good faith, and has merit or is not
frivolous, the court shall order that the petitioner proceed in
forma pauperis, and the court shall appoint counsel for the
petitioner. If it shall appear to the court that the record in the
proceedings which resulted in the conviction and sentence,
including, but not limited to, a transcript of the testimony
therein, or the record or records in a proceeding or
proceedings on a prior petition or petitions filed under the
provisions of this article, or the record or records in any other
proceeding or proceedings instituted by the petitioner to
secure relief from his conviction or sentence, or all of such
records, or any part or parts thereof, are necessary for a
proper determination of the contention or contentions and
grounds (in fact or law) advanced in the petition, the court
shall, by order entered of record, direct the state to make
arrangements for copies of any such record or records, or all
of such records, or such part or parts thereof as may be
sufficient, to be obtained for examination and review by the
court, the state and the petitioner. The state may on its own
initiative obtain copies of any record or records, or all of the
records, or such part or parts thereof as may be sufficient, as
aforesaid, for its use and for examination and review by the
court and the petitioner. If, after judgment is entered under
the provisions of this article, an appeal or writ of error is
sought by the petitioner in accordance with the provisions of
section nine of this article, and the court which rendered the
judgment is of opinion that the review is being sought in good
faith and the grounds assigned therefor have merit or are not
frivolous, and such court finds that the petitioner is unable to
pay the costs incident thereto or to employ counsel, the court
shall, upon the petitioner's request, order that the petitioner
proceed in forma pauperis and shall appoint counsel for the
petitioner. If an appeal or writ of error is allowed, whether
upon application of the petitioner or the state, the reviewing
court shall, upon the requisite showing the request as
aforesaid, order that the petitioner proceed in forma pauperis
and shall appoint counsel for the petitioner. If it is
determined that the petitioner has the financial means with
which to pay the costs incident to any proceedings hereunder
and to employ counsel, or that the petition was filed in bad
faith or is without merit or is frivolous, or that review is being
sought or prosecuted in bad faith or the grounds assigned
therefor are without merit or are frivolous, the request to
proceed in forma pauperis and for the appointment of
counsel shall be denied and the court making such
determination shall enter an order setting forth the findings
pertaining thereto and such order shall be final.

(b) Whenever it is determined that a petitioner shall
proceed in forma pauperis, all necessary costs and expenses
incident to proceedings hereunder, originally, or on appeal
pursuant to section nine of this article, or both, including, but
not limited to, all court costs, and the cost of furnishing
transcripts, shall, upon certification by the court to the state
auditor, be paid out of the treasury of the state from the
appropriation for criminal charges. Any attorney appointed
in accordance with the provisions of this section shall be paid
for his services and expenses in accordance with the
provisions of article twenty-one, chapter twenty-nine of the 
code. All costs and expenses incurred incident to obtaining 
copies of any record or records, or all of the records, or such 
part or parts thereof as may be sufficient, as aforesaid, for 
examination and review by the court, the state and the 
petitioner, shall, where the petitioner is proceeding in forma 
pauperis, and the court orders the state to make 
arrangements for the obtaining of same or the state obtains 
the same on its own initiative, be paid out of the treasury of 
the state, upon certification by the court to the state auditor, 
from the appropriation for criminal charges. All such costs, 
expenses and fees shall be paid as provided in this subsection 
(b) notwithstanding the fact that all proceedings under the 
provisions of this article are civil and not criminal in 
character. In the event a petitioner who is proceeding in 
forma pauperis does not substantially prevail, all such costs, 
expenses and fees shall be and constitute a judgment of the 
court against the petitioner to be recovered as any other 
judgment for costs.

(c) In the event a petitioner who is not proceeding in 
forma pauperis does not substantially prevail, all costs and 
expenses incurred incident to obtaining copies of any record 
or records, or all of the records, or such part or parts thereof as 
may be sufficient, as aforesaid, for examination and review by 
the court, the state and the petitioner, shall, where the court 
orders the state to make arrangements for the obtaining of 
same or the state obtains the same on its own initiative, be 
and constitute a judgment of the court against the petitioner 
to be recovered as any other judgment for costs. In any case 
where the petitioner does not proceed in forma pauperis, the 
court shall adjudge all costs and expenses to be paid as shall 
seem to the court to be right, consistent with the immediately 
preceding sentence of this subsection (c) and with the 
provisions of chapter fifty-nine of this code, as amended.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
   2. Trial of Criminal Cases.
ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

When an indictment is found in any county, against a person for a felony or misdemeanor, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term. If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state, the reasonable expense whereof shall be paid out of the treasury of the state, upon certificate of the court wherein the case is pending. Every deposition so taken may, on the motion of the defendant, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case as evidence therein. A court of record may appoint counsel to assist an accused in criminal cases at any time upon request. A copy of the indictment and of the list of the jurors selected or summoned for his trial, as provided in section three of this article, shall be furnished him, upon his request, at any time before the jury is impaneled. In every case where the court appoints counsel for the accused and the accused presents an affidavit showing that he cannot pay therefor, the attorney so appointed shall be paid for his
ARTICLE 12. PROBATION AND PAROLE.

§62-12-22. Appointment of counsel for parole violators; authority to appoint; payment of counsel.

Any person accused of a violation of his parole, as set forth in this article, may be represented by counsel at any hearing held for the purpose of determining whether his parole should be revoked. In the event the person accused of a violation of his parole is unable to pay for counsel and desires to have counsel appointed for him, he shall present his application for the appointment of counsel and an affidavit reflecting his inability to pay for such counsel to the circuit court in the county in which such person is confined or in the county in which the hearing is to be held for the purpose of determining whether his parole should be revoked, or to the judge thereof in vacation. If it appears to the satisfaction of the court or judge that such person is in fact unable to pay for counsel, such court or judge may appoint counsel to represent such person. Counsel so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

CHAPTER 184

S. B. 456—By Mr. McGraw, Mr. President, Mr. Williams, Mr. Nelson, Mr. Gilligan, Mr. Heck, Mr. Colombo, Mr. Jones, Mrs. Spears, Mr. Boettner, Mr. Tonkovich, Mr. Holliday and Mr. Galperin

(Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.)

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing a supplemental benefit for certain annuitants
receiving less than a specified annual annuity, contingent on legislative budgetary action; and specifying factors for eligibility and computation thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less than seven thousand two hundred dollars annually on the effective date of this section, shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit:

Provided, That the effective date of retirement for such annuitant was prior to July one, one thousand nine hundred seventy-seven, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, “effective date of retirement” means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.
Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article or any other article or chapter of this code, shall not exceed seven thousand two hundred dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand two hundred dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to July one, one thousand nine hundred seventy-seven, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date.

Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more of credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any
annuitant affected by the provisions of this section, togethertogether with any of the other provisions of this article,shall not exceed seven thousand two hundred dollarsannually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

CHAPTER 185
(5. B. 155—By Mr. Boettner)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reemployment by retirants under the public employees retirement act; compensation received from temporary employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a 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. A retirant may accept temporary employment from a participating employer so long as he shall not receive compensation in excess of six thousand dollars.
AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the creation of the public employee suggestion award board and for cash or honorary awards for state employees whose adopted suggestions result in savings or improvement in state operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-1. Employee suggestion award program created.

§5A-1A-2. Board created.

§5A-1A-3. Duties of board; excluded employees.

§5A-1A-4. Awards.

§5A-1A-1. Employee suggestion award program created.

There is hereby established an employee suggestion award program for employees of state government. Under this program cash or honorary awards may be made to state employees whose adopted suggestions will result in substantial savings or improvement in state operations.

§5A-1A-2. Board created.

There is hereby established an employee suggestion award board which shall be composed of the commissioner of finance and administration, the commissioner of the department of labor, the president of the Senate, the speaker of the House of Delegates, one member of the House of Delegates to be appointed by the speaker of the House, one member of the Senate to be appointed by the president of the Senate, and
the director of the department of employment security. The terms of the members of the board shall be consistent with the terms of the offices to which they have been elected or appointed.

§5A-1A-3. Duties of board; excluded employees.

It shall be the duty of the board to adopt rules governing its proceedings, to elect a chairman and secretary, to keep permanent and accurate records of its proceedings, to establish criteria for making awards, to adopt rules and regulations to carry out the provisions of this article, and to approve each award made.

In establishing criteria for making awards, the board may exclude certain levels of positions from participation in the program, but in no event shall the following levels of management be eligible to receive cash awards under the program:

(1) Governor’s staff, departmental commissioners and their equivalent.

(2) Assistant or deputy commissioner, assistant to commissioner, major fiscal and administrative policy departmental staff or their equivalent.

(3) Director or division chief, including the division chief or director of a statewide program, and which includes a chief of a division supervising several service units or their equivalent.

(4) Assistant to director or division chief, section chief or head of major departmental function or their equivalent.

§5A-1A-4. Awards.

The maximum cash award approved shall be limited to twenty percent of the first year’s estimated savings, as established by the head of the affected spending unit, or two thousand dollars whichever is less. Any cash awards approved by the board shall be charged by the head of the affected spending unit against the appropriation item or items to which such estimated savings apply.
CHAPTER 187

(Com. Sub. for H. B. 1553—By Mr. Speaker, Mr. See)

[Passed April 7, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum supplemental payment to state policemen in lieu of overtime; and increasing salaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law; bond; leave time for members called to duty in guard or reserves.

Members of the department 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-six thousand seven hundred sixty dollars; any major shall receive an annual salary of twenty-four thousand two hundred sixteen dollars; any captain shall receive an annual salary of twenty-two thousand two hundred sixty dollars; any lieutenant shall receive an annual salary of twenty thousand nine hundred sixteen dollars; any master sergeant or first sergeant shall receive an annual salary of nineteen thousand six hundred twenty dollars; any sergeant shall receive an annual salary of eighteen thousand six hundred sixty dollars; any corporal shall receive an annual salary of seventeen thousand six hundred sixty-four dollars; any trooper first class shall receive an annual salary of sixteen thousand six hundred thirty-two dollars; and any newly enlisted trooper shall receive a salary of one thousand two hundred dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each
21 such trooper shall receive, during the remainder of his first
22 year's service a salary of one thousand two hundred ninety-
23 seven dollars monthly. During the second year of his service in
24 the department each trooper shall receive an annual salary of
25 fifteen thousand nine hundred twelve dollars; during the third
26 year of his service each such trooper shall receive an annual
27 salary of sixteen thousand one hundred seventy-six dollars;
28 and during the fourth and fifth year of such trooper's service
29 and for each year thereafter he shall receive an annual salary
30 of sixteen thousand three hundred ninety-two dollars. Each
31 member of the department whose salary is specified herein
32 shall receive and be entitled to an increase in salary over that
33 hereinbefore set forth, for grade in rank, based on length of
34 service, including that heretofore and hereafter served with
35 the department, as follows: At the end of five years of service
36 with the department, such member shall receive a salary in-
37 crease of three hundred dollars to be effective during his
38 next three years of service and a like increase at three-year
39 intervals thereafter, with such increases to be cumulative.
40
41 In applying the foregoing salary schedule where salary in-
42 creases are provided for length of service, members of the de-
43 partment in service at the time this article becomes effective
44 shall be given credit for prior service and shall be paid such
45 salaries as the same length of service will entitle them to
46 receive under the provisions hereof.
47
48 The Legislature finds and declares that there is litigation
49 pending in the circuit court of Kanawha County on the ques-
50 tion whether members of the department of public safety are
51 covered by the provisions of the state wage and hour law,
52 article five-c, chapter twenty-one of this code. The Legislature
53 further finds and declares that because of the unique duties
54 of members of the department, it is not appropriate to apply
55 said wage and hour provisions to them. Accordingly, members
56 of the department of public safety are hereby excluded from
57 the provisions of said wage and hour law. The express ex-
58 clusion hereby enacted shall not be construed as any indica-
59 tion that such members were or were not heretofore covered
60 by said wage and hour law.
61
62 In lieu of any overtime pay they might otherwise have re-
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 the 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 said 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 depart-
ment'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 two hundred
dollars monthly. The superintendent and civilian employees
of the department shall not be eligible for any such supple-
mental 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, con-
ditioned 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 per-
forming 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 188

(Com. Sub. for H. B. 749—By Mr. Brenda)

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

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b, relating to the regulation of public utilities by the public service commission; transitional suspension of schedules and deferring the use of rates, charges, classifications, regulations or practices; legislative findings and procedure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-3b. Transitional suspension of schedule; legislative findings; procedure.

1 The Legislature finds that in anticipation of the operative date of the provisions of section four-a of this article, certain regulated utilities have presented to the public service commission a large number of proceedings pursuant to section four of this article. In the public interest, the commission should be granted sufficient authority to make disposition of those cases in an orderly and just manner, consistent with the duties of the commission requiring conversion of its procedure from that provided in section four of this article to that provided in section four-a. In view of the increased demands upon the commission, it is in the public interest to grant to the public service commission additional authority for the suspension of rates in cases filed pursuant to section four of this article.

2 In any proceeding commenced pursuant to the provisions of section four of this article which is pending on the effective
date of this section or is thereafter commenced, the commission may at the commencement of, or during the pendency of, any period of suspension provided for in section four, further suspend the operation of any such schedule and defer the use of such rate, charge, classification, regulation or practice for a further and additional period of one hundred fifty days or such shorter further and additional period as the commission may order. The total period of suspension including the original suspension and the suspension resulting from the application of this section shall not exceed a period equal to the maximum suspension prescribed for the public utility as it is classified in section four-a of this article, according to the number of customers. The statement of reasons adopted pursuant to section four of this article shall be a sufficient statement of reasons for such further and additional period under this section. Any such order for a further and additional period of suspension shall be effective upon its service upon the utility affected thereby, and may make provision for interim rate relief or may provide only for such rates as have been fully approved previously. At the expiration of any such additional period of suspension, the commission shall authorize rates under bond under the provisions of section four of this article, or shall make a final order: Provided, That proceedings in which such further and additional period of suspension have commenced but not expired on the first day of July, one thousand nine hundred eighty-one, shall not be treated as filed anew on the first day of July, one thousand nine hundred eighty-one, pursuant to section four of this article.

CHAPTER 189
(S. B. 226—By Mr. Susman)

[Passed April 8, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to procedures for changing rates of municipally operated public utilities; filing requirements; limited public service commission authority.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4b. Procedures for changing rates of municipally operated public utilities.

(a) Municipally operated public utilities are not subject to the rate approval provisions of section four or four-a of this article 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 and such other information as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by
not less than twenty-five percent of the customers served by such municipally operated public utility; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility under subdivision (1), subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) 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 days from the date, the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying in whole or in part, the rates or charges contained in the ordinance.
Upon receipt of a petition for review of the rates under the provisions of subsection (c)' of this section, the commission may exercise the power granted to it under the provisions 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.

CHAPTER 190
(S. B. 225—By Mr. Susman)

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

AN ACT to amend and reenact section eleven, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grant by the public service commission of a certificate of public convenience and necessity; allowing waiver of formal hearing after specified notice; and allowing waiver of the notice requirement before filing for such certificate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the public service commission a
certificate of public convenience and necessity requiring such construction, franchise, license or permit. Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the 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. The publication area shall be the proposed area of operation. 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: Provided, That the commission may modify or waive the thirty-day notice requirement. 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.
CHAPTER 191

(S. B. 571—Originating in the Senate Committee on Finance)

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

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to the authority of the public service commission to buy and hold real estate and undertake the construction or remodeling and furnishing of a building for the headquarters of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. HEADQUARTERS.

§24-7-1. Legislative findings; commission authorized to acquire headquarters.

§24-7-2. Exclusive authority for purchase of headquarters.

§24-7-3. Management and control of public service commission headquarters building.

§24-7-1. Legislative findings; commission authorized to acquire headquarters.

(a) The Legislature hereby finds that the public service commission's present physical facilities impede the efficient operation of the commission in that many offices are severely overcrowded, several divisions are physically isolated from the main offices of the commission at the capitol building, and only one hearing room is available internally. The Legislature further finds that pursuant to section twenty, article one, chapter four of the code of West Virginia, it has assigned and set aside for the exclusive use of the Legislature all of the space on the second floor of the east wing of the capitol building, which location is presently occupied by the public service commission.

The Legislature further adopts the recommendation 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" that the public service commission should be authorized to buy or lease suitable office, hearing and other facilities in the Charleston area in order to consolidate its operations, and that existing surplus funds should be used to pay the one-time costs incurred in relocation.

(b) Accordingly, the Legislature hereby authorizes and directs the public service commission:

(1) To contract to acquire and to acquire, in the name of the commission or of the state, a suitable site in or near the seat of government for a public service commission headquarters building that will consolidate all of its operations, related facilities and grounds, including real property, rights and easements necessary for this purpose, or to use any suitable site which may be owned by the state and available and designated for this purpose and to construct a public service commission headquarters building on such site and equip and furnish said building.

(2) To contract to acquire and to acquire and hold, in the name of the commission or of the state, services, materials, furnishings and equipment required in connection with the location, design, construction, furnishing and equipping of the public service commission building.

(3) To employ architects to prepare plans for the public service commission headquarters building, to assist and advise the architects in the preparation of those plans and to approve on behalf of the state all plans for the public service commission headquarters building.

(4) To make all contracts and execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by the provisions of this article.

(5) To supervise generally the location, construction, furnishing and equipping of the public service commission headquarters building.
§24-7-2. Exclusive authority for purchase of headquarters.

The authority granted to the public service commission in section one is made notwithstanding other provisions of law relating to the authority of the state of West Virginia, or its agencies, departments, boards and commissions, to contract to acquire and to acquire real property and to hold, improve and dispose of same, including, but not limited to, article five, chapter one, article six, chapter five, and section fifteen, article one, chapter twenty of this code: Provided, That nothing in this article shall be construed to grant to the public service commission the power of eminent domain.

§24-7-3. Management and control of public service commission headquarters building.

Notwithstanding the provisions of section eleven, article six, chapter five of this code, the commission shall properly maintain, repair, manage, operate and control the public service commission headquarters building, and may make and enter into all contracts or agreements necessary and incidental for the performance of its duties and the execution of its powers under this article.

CHAPTER 192
(S. B. 34—By Mr. Steptoe)

[Passed April 9, 1931; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a fiscal note to accompany proposed rules and regulations filed in the state register, with the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

That section seven, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. RULE MAKING.

§29A-3-7. Filing of proposed rules and regulations; fiscal note required.

(a) If a proposed rule or regulation fixes rules of procedure, practice or evidence for dealings with or proceedings before the agency a copy thereof shall be filed in the state register.

(b) All other proposed rules or regulations shall be filed in the state register, with the governor, and with the legislative rule-making committee in accordance with section eleven of this article except as otherwise provided in this chapter.

(c) All proposed rules and regulations to be filed under subsections (a) and (b) of this section shall have a fiscal note attached itemizing the costs of implementing the rules and regulations as they relate to this state and to persons affected by the rules and regulations. The objectives of the rules and regulations shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules and regulations. No rule or regulation shall be void or voidable by virtue of noncompliance with this subsection.

CHAPTER 193

(Com. Sub. for H. B. 1157—By Mr. Speaker, Mr. See)

[Passed April 6, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of certain state appointive officers.

Be it enacted by the Legislature of West Virginia:

That section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

Notwithstanding any other provision of this code to the contrary, each of the appointive state officers named in this section shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of such appointive state officers shall hereafter be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office.

Beginning on the first day of July, one thousand nine hundred eighty-one, the annual salary of each such named appointive state officer shall be as follows:

The commissioner of highways, forty-three thousand eight hundred seventy-five dollars; commissioner of finance and administration, forty-two thousand one hundred ninety-two dollars; tax commissioner, forty-three thousand eight hundred seventy-five dollars; director of department of health, fifty thousand six hundred twenty-five dollars; director of the department of natural resources, forty-two thousand one hundred ninety-two dollars; commissioner of the department of welfare, forty-two thousand one hundred ninety-two dollars; superintendent of department of public safety, thirty-nine thousand three hundred seventy-five dollars; alcohol beverage control commissioner, thirty-three thousand seven hundred fifty dollars; commissioner of banking, thirty-three thousand seven hundred fifty dollars; director of mines, thirty-nine thousand three hundred seventy-five dollars; state workmen’s compensation commissioner, thirty-three thousand seven hundred fifty dollars; director of personnel, civil service commission, thirty-three thousand seven hundred fifty dollars; commissioner of corrections, thirty-three thousand seven hundred fifty dollars; commissioner of culture and history,
STATE OFFICERS

chapter 194

(Com. Sub. for S. B. 606—By Mr. Tomblin)

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

AN ACT to amend article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; to amend article seven, chapter seven of said code by adding thereto a new section, designated section sixteen-a; to amend article five, chapter eight of said code by adding thereto a new section, designated section twelve-a; to amend article two-a, chapter seventeen of said code by adding thereto a new section, designated section eight-c; and to amend and reenact section thirteen, article five, chapter eighteen of said code, all relating to providing that state officials and employees may be granted the use of publicly provided carriage for going from their residences to their workplaces and return; state officials including, but not limited to, the departments of public safety, natural resources, state fire marshal, board of regents, corrections, county sheriffs, deputies, county officials and employees may be granted

thirty-three thousand seven hundred fifty dollars; labor commissioner, thirty-one thousand five hundred dollars; commissioner of employment security, thirty-one thousand five hundred dollars; insurance commissioner, thirty-one thousand five hundred dollars; commissioner of motor vehicles, thirty-three thousand seven hundred fifty dollars; adjutant general, thirty-one thousand five hundred dollars; director of emergency services, twenty-eight thousand one hundred twenty-five dollars; nonintoxicating beer commissioner, twenty-eight thousand one hundred twenty-five dollars; director of veterans affairs, twenty-eight thousand one hundred twenty-five dollars; members of the board of review of employment security and members of workmen's compensation appeal board, fifteen thousand seven hundred fifty dollars; and members of the board of probation and parole, twenty-five thousand dollars.
the use of publicly provided carriage for going to and from their place of residence to their workplaces and return; municipal officials and employees may be granted the use of publicly provided carriage for going from their residences to their workplaces and return; providing for payment of travel expenses incurred by interviewees for employment by county boards of education; officials and employees of county boards of education may be granted the use of publicly provided carriage for going from their residences, to their workplaces and return; employees of the department of highways may be granted the use of publicly provided carriage for going from their residences to their workplaces and return.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.
8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.
17. Roads and Highways.
18. Education.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-8. Public carriage for state officials and employees and the state board of regents.

1 State law-enforcement officials, including, but not limit-
ed to, the director of the department of public safety, the
adjutant general of the West Virginia national guard, the
director of the office of emergency services, the director
of the department of natural resources, the commissioner
of the department of corrections, the state fire marshal,
state fire administrator and officials of the state board of
regents, at the discretion of the chancellor thereof, shall
have the authority to use, and permit and allow or dis-
allow their designated employees to use, publicly pro-
vided carriage to travel from their residences to their
workplace and return: Provided, That such usage is
subject to the supervision of such official and is directly
connected with and required by the nature and in the
performance of such official's or designated employee's
duties and responsibilities.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
ETC., COMPENSATION OF ELECTED COUNTY OF-
FICIALS; COUNTY ASSISTANTS, DEPUTIES AND EM-
PLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-16a. Public carriage.

The sheriff of each county and his deputies who are
engaged in law-enforcement activities may, in the dis-
ccretion of the sheriff, use publicly provided carriage to
travel from his residence to his workplace and return.
Any other county official or employee may, or may not, in
the discretion of the county commission, be furnished
with the use of publicly provided carriage to travel from
his residence to his workplace and return: Provided, That
such usage is subject to the supervision of said sheriff or
commission and is directly connected with and required
by the nature and in the performance of such sheriff's,
deputy's, county official or employee's duties and respon-
sibilities.
CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-12a. Public carriage for officers and employees.

Any municipal officer or employee may, or may not, in the discretion of the city manager, mayor or the governing body, be furnished with the use of publicly provided carriage to travel from his residence to his workplace and return: Provided, That such usage is subject to the supervision of such city manager, mayor or governing body and is directly connected with and required by the nature and in the performance of such officer's or employee's duties and responsibilities.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8c. Use of public carriage for designated employees.

In addition to the other powers given and assigned to him in this chapter, the commissioner of highways shall have authority to use, and permit and allow or disallow his designated employees to use, publicly provided carriage to travel from their residences to their workplace and return. Provided, That such usage is subject to the supervision of such official and is directly connected with and required by the nature and in the performance of such official's or designated employee's duties and responsibilities.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:
(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in May, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such
regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging; Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, That in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (7) of this section;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(8) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(9) To employ and to provide in-service training for
teacher aides, the training to be in accordance with rules and regulations of the state board;

(10) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(11) To employ legal counsel;

(12) To provide appropriate uniforms for school service personnel;

(13) To provide at public expense and under regulations as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by such county board of education;

(14) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such board and is directly connected with and required by the nature and in the performance of such employee's duties and responsibilities; and

(15) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

No policy or contract of public liability insurance providing coverage for public liability shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against the board, its officers, agents or employees, in which there is in effect liability insurance coverage in an amount equal to or greater than the amount sued for, the attorney for such board, the attorney for such insurance carrier, or any other attorney who may appear on behalf of the board,
its agents, officers or employees shall not set up the de-
defense of governmental immunity in any such action.

"Quasi-public funds" as used herein means any money
received by any principal, teacher, student or other person
for the benefit of the school system as a result of curric-
ular or noncurricular activities.

The board of each county shall expend under such regu-
lations as it establishes for each child an amount not to
exceed the proportion of all school funds of the district
that each child would be entitled to receive if all the
funds were distributed equally among all the children of
school age in the district upon a per capita basis.

CHAPTER 195
(S. B. 279—By Mr. Ash and Mr. Gilligan)

[Passed April 10, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter
four of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to adding additional agencies
to be terminated and rescheduling agencies scheduled for
termination on the first day of July, one thousand nine
hundred eighty-one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

The following governmental entities and programs shall be
terminated on the date indicated but no governmental entity
or program shall be terminated under this article unless a
performance 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-one: Judicial council of West Virginia; geological and economic survey commission; motor vehicle certificate appeal board; child welfare licensing board.

(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; department of corrections.

(3) On the first day of July, one thousand nine hundred eighty-three: Office of the workmen's compensation commissioner; state building commission; anatomical board; reclamation commission; economic opportunity advisory commission; community development authority board.

(4) On the first day of July, one thousand nine hundred eighty-four: The following divisions of the programs of the department of agriculture: Soil conservation 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 beverage control licensing advisory board; driver's licensing advisory board; oil and gas inspectors' examining board; women's commission.

(5) On the first day of July, one thousand nine hundred eighty-five: Department of welfare; beautification commission; labor management advisory council; employment security advisory council; oil and gas conservation commission.

(6) On the first day of July, one thousand nine hundred eighty-six: Division of archives and history; state board of insurance; interstate commission on the Potomac River basin; public service commission; health resources advisory council; welfare advisory council; board of banking and financial institutions: Provided, That in the case of the public service commission, the study by the committee required by this article shall be completed on or before the first day of July, one thousand nine hundred eighty-five, and shall be by such date transmitted to the joint committee on government
and finance for review by the joint committee or its
subcommittee designated pursuant to section one, article
one, chapter twenty-four of this code for review, examination
and study of the operations of the public service commission.

(7) On the first day of July, one thousand nine hundred eighty-seven: The geological and economic survey; the commission on uniform state laws; department of labor; civil service commission advisory board; council of finance and administration; motorcycle safety standards and specifications board.

(8) On the first day of July, one thousand nine hundred eighty-eight: Information system advisory commission; veteran's council; labor management relations board; board of investments; records management and preservation advisory committee; minimum wage rate board.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; interagency committee on pesticides; commission on charitable organizations; board of school finance; veteran's affairs advisory council; emergency medical services advisory council; pesticides board of review.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; forest industries industrial foundation.

CHAPTER 196

(S. B. 102—By Mr. Galperin and Mr. Huffman)

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

AN ACT to amend article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to reestablishing the commission on uniform state laws until the first day of July, one thousand nine hundred eighty-seven.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-5. Reestablishment of commission.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the commission on uniform state laws should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the commission on uniform state laws shall continue to exist until the first day of July, one thousand nine hundred eighty-seven.

CHAPTER 197

(S. B. 670—By Mr. McGraw, Mr. President, and Mr. Williams)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter eleven by adding thereto a new article, designated article six-b, all relating generally to the ad valorem property tax homestead exemption; defining terms; providing for allowance of exemption to persons age sixty-five or older or who are permanently and totally disabled; requiring the filing of claim and annual certification of permanent and total disability; providing for waiver of exemption for failure to timely file; providing procedures for review of claims and for determination and payment of reimbursements; creating the homestead property tax exemption fund; providing for criminal penalties, severability and effective date.
Be it enacted by the Legislature of West Virginia:

That section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter eleven be amended by adding thereto a new article, designated article six-b, all to read as follows:

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-1. Purpose.

§11-6B-2. Definitions.

§11-6B-3. Ten thousand dollar homestead exemption allowed.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

§11-6B-5. Determination; notice of denial of claim.

§11-6B-6. Appeals procedure.

§11-6B-7. Property tax books.

§11-6B-8. State reimbursement of localities.

§11-6B-9. Forms, instructions and regulations.

§11-6B-10. Criminal penalties.

§11-6B-11. Severability.

§11-6B-12. Effective date.

§11-6B-1. Purpose.

This article is enacted to implement the amendment to article X, section one-b of the constitution increasing the ad valorem property tax homestead exemption, which was ratified by the people at the general election held on the fourth day of November, one thousand nine hundred eighty.

§11-6B-2. Definitions.

For purposes of this article, the term:

(1) "Assessed value" means the value of property as determined under article three of this chapter.

(2) "Claimant" means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes.

(3) "Homestead" means a single family residential house, including a modular home, and the land surrounding such structure; or a mobile home regardless of whether the land upon which such mobile home is situated is owned or leased.

(4) "Owner" means the person who is possessed of the
homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability shall be deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be deemed the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the party in possession.

(5) "Permanently and totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(6) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment date.

(7) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than one half of the year by the owner and that the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.

(8) "Tax year" means the calendar year following the July first assessment day.

§11-6B-3. Ten thousand dollar homestead exemption allowed.

(a) General.—An exemption from ad valorem property taxes shall be allowed for the first ten thousand dollars of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled. Only one exemption shall be allowed for each homestead used and occupied exclusively for residential purposes by the owner thereof, regardless of the number of qualified owners residing therein.

(b) Attachment of exemption.—This exemption shall attach to the homestead occupied by the qualified owner on the July first assessment date and shall be applicable to taxes
for the following tax year. An exemption shall not be
transferred to another homestead until the following July
first. If the homestead of an owner qualified under this article
is transferred by deed, will or otherwise, the ten thousand
dollar exemption shall be removed from the property on the
next July first assessment date unless the new owner
qualifies for the exemption.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

(a) General.—No exemption shall be allowed under this
article unless a claim of exemption is filed with the assessor
of the county in which the homestead is located, on or before
the first day of October following the July first assessment
day. In the case of sickness, absence or other disability of the
claimant, the claim may be filed by the claimant or his duly
authorized agent.

(b) Certification of disability.—Any doctor of osteopathy
or doctor of medicine licensed to practice medicine and
surgery is a proper authority to certify that an individual is
permanently and totally disabled. A written certification
signed by a licensed doctor must accompany each claim for
exemption that is based on the permanent and total disability
of the claimant.

(c) Renewals.

(1) Senior citizens.—If the claimant is age sixty-five or
older, then after the claimant has filed for the exemption once
with his assessor, there shall be no need for that claimant to
refile unless the claimant moves to a new homestead.

(2) Disabled.—If the claimant is permanently and totally
disabled, then after the claimant has filed for the exemption once
with his assessor, entitlement to the exemption shall be
maintained by annually filing, between July first and October
first of each year, a certification of continued permanent and
total disability.

(3) Waiver of exemption.—Any person not filing his claim
for exemption or certification of continued permanent and
total disability with the assessor of his county on or before the
first day of October shall be deemed to have waived his right
to exemption for the next tax year.
§11-6B-5. Determination; notice of denial of claim.

1 The assessor shall as soon as practicable after a claim for exemption is filed or a certification of continued permanent and total disability is filed, review that claim or certificate and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than the first day of November, serve the claimant with written notice explaining why the exemption was denied, and furnish a form for filing with the county commission should the claimant desire to take an appeal. This notice shall be served on the claimant or his authorized representative either by personal service or by certified mail.

§11-6B-6. Appeals procedure.

1 (a) Notice of appeal; thirty days.—Any claimant aggrieved by the denial of his claim for exemption, may appeal to the county commission, within thirty days after receipt of written notice explaining why the exemption was denied.

5 (b) Review; determination; appeal.—The county commission shall complete its review and issue its determination within sixty days after receipt of the notice of appeal from the claimant. In conducting its review, the county commission may hold a hearing on the claim. The assessor or the claimant may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.

§11-6B-7. Property tax books.

1 (a) Property book entry.—The exemption of the first ten thousand dollars of assessed value shall be shown on the property books as a deduction from the total assessed value of the homestead.

5 (b) Levy; statement to homestead owner.—When the ten thousand dollar exemption is greater than the total assessed value of the eligible homestead, no taxes shall be levied. The sheriff shall issue a statement to the owner showing that no taxes are due.
§11-6B-8. State reimbursement of localities.

(a) Annual appropriation.—The Legislature shall annually appropriate to the homestead property tax exemption fund, general revenues of sufficient amount to reimburse local levying bodies for the amount of ad valorem property tax revenues lost by reason of the increase in the homestead property tax exemption: Provided, That no reimbursement shall be made for the amount of ad valorem property tax revenues lost by reason of the exemption of the first five thousand dollars of assessed value of real property owned and occupied by a person who is age sixty-five or older.

(b) Report of assessor.—On or before the first day of November following the July first assessment day, the assessor of each county shall forward to the tax commissioner a written report showing the assessed value of property eligible for the homestead exemption, the amount of such assessed value exempt from ad valorem property taxes because of the homestead exemption, the estimated loss in revenue to each levying body in his county because of the homestead exemption, the portion of such estimated loss eligible for reimbursement by the state and such other information as the tax commissioner may require. A copy of this report, or the pertinent portions thereof, shall also be filed with each levying body in his county.

(c) Request for appropriation.—On or before the last day of November following the July first assessment day, the tax commissioner shall submit to the commissioner of finance and administration a request for appropriations to the homestead property tax exemption fund to reimburse local levying bodies for the amount of ad valorem property tax revenues lost due to the increase in the homestead property tax exemption.

(d) Homestead property tax exemption fund.—In order to provide the reimbursement to local levying bodies as required by this article, there is hereby created in the state treasurer's office a special fund to be known as the "homestead property tax exemption fund." The moneys in such fund shall be paid to the county sheriff as agent for the local levying bodies between the first and thirty-first day of
January of each calendar year to reimburse them for the
amount of tax revenue lost during the preceding calendar
year by reason of the homestead tax exemption increase.

(e) Local levying bodies; account receivable.—Each local
levying body shall on the first day of July of each fiscal year
establish and show as a revenue receivable the amount of
revenue lost by reason of the homestead property tax
exemption increase and for which they will be reimbursed by
the state in the subsequent calendar year.

(f) Request for payment; sheriff.—The sheriff of each
county shall in August of each year send the tax
commissioner a request for payment of the amount of ad
valorem property tax revenue lost by the local governmental
units in his county due to the homestead tax exemption
increase. In January of each year and after review and
approval by him, the tax commissioner shall issue his
requisition for the amount payable and the auditor shall issue
his warrant on the treasurer. The treasurer shall pay the
warrant out of the “homestead property tax exemption fund.”

§11-6B-9. Forms, instructions and regulations.

The tax commissioner shall prescribe and supply all
necessary instructions and forms for administration of this
article. Additionally, the tax commissioner may make all
necessary rules and regulations for this article as provided in
the state administrative procedure act in chapter
twenty-nine-a of this code.

§11-6B-10. Criminal penalties.

(a) False or fraudulent claim for exemption.—Any
claimant who willfully files a fraudulent claim for exemption,
and any person who knowingly assisted in the preparation or
filing of such fraudulent claim for exemption or who
knowingly supplied information upon which the fraudulent
claim was prepared or allowed, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than fifty nor more than one hundred and fifty
dollars, or imprisoned in the county jail for not more than six
months, or both fined and imprisoned.

(b) Fraudulent assessments.—(1) An assessor or
employee of a county who, with intent to defraud the state,
assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, in order to increase the cost of the homestead exemption to his county and to thereby secure a larger reimbursement from the state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(2) An assessor or employee of a county who, with intent to defraud a claimant, assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(c) Failure to notify assessor.—A claimant or his legal representative, who prior to the next first day of July, fails to notify the assessor of the county wherein property subject to the homestead property tax exemption is located, that title to that property or a portion thereof was transferred by deed, grant, sale, gift, will or by the laws of this state regulating descent and distribution or that the property is no longer used and occupied for residential purposes exclusively by the claimant, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or imprisoned for not more than one year or both.

§11-6B-11. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
§11-6B-12. Effective date.

1 The provisions of this article shall take effect on the first day of July, one thousand nine hundred eighty-one.

CHAPTER 198

(H. B. 1109—By Mr. Teets and Mr. Shiflet)

[Passed April 11, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criteria for the determination of the market value of certain property for inheritance tax purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

§11-11-5. Determination of market value.

1 The market value of property is its actual market value after deducting debts and encumbrances for which the same is liable, and to the payment of which it shall actually be subjected, except that the market value of all property owned, used and occupied by the decedent at the time of his death exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: Provided, That the market value of all farms used, occupied and cultivated by decedents at the time of their death or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regard-
less of what the value of the property would be if used for
some other purpose and that the market value shall be
arrived at by giving consideration to the fair and reasonable
income which the same might be expected to earn under
normal conditions in the locality wherein situated, if rented.
In fixing such market value, allowances shall not be made
for debts incurred by the decedent, or encumbrances made
by him, unless such debts or encumbrances were incurred
or created in good faith for an adequate consideration, nor
for any debt in respect whereof there is a right to reimburse­
ment from any other estate or person, unless such reimburse­
ment from any other estate or person cannot be obtained.

For the purpose of the tax there shall be deducted from
the market value of the property transferred the value at
which it was assessed for any inheritance or transfer tax paid
to the state of West Virginia upon a transfer to the decedent
at any time within three years prior to the death of the
decedent. That part of the value of property which was
allowed as an exemption and upon which the tax was not
actually measured and paid shall not be deducted as pre­
viously taxed property. This paragraph shall apply only to
transferees designated in subdivisions (a) and (b), section
two of this article.

CHAPTER 199
H. B. 1794—By Mr. Swann)

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

AN ACT to amend and reenact section fourteen, article twelve,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to hearings and
appeals when a business franchise registration certificate is
canceled, not issued or not renewed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION TAX.

§11-12-14. Hearing; appeal.

Any person adversely affected by refusal of the tax commissioner, or his representative, to issue a business franchise registration certificate or to renew this certificate may request a hearing before the tax commissioner, or his examiner, if such request is made within sixty days from receipt of written notice of the refusal.

The hearing provided for in this section and section five of this article shall be held as provided in section nine, article ten of this chapter and the taxpayer may take an appeal as provided in section ten of said article ten.

CHAPTER 200

(H. B. 1236—By Mr. Speaker, Mr. See)

[Passed March 31, 1981; in effect July 1, 1981. Approved by the Governor.]
sonal income tax and the corporation net income tax shall not be reduced by the tax credit for industrial revitalization.

Be it enacted by the Legislature of West Virginia:

1 That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-d; that said chapter eleven be amended by adding thereto a new article, designated article thirteen-d; and that section eight, article twenty-one and section nine, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:

Article
13D. Business and Occupation Tax Credit For Industrial Revitalization.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3d. Tax credit for industrial revitalization.

1 (1) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-d of this chapter, relating to tax credit for industrial revitalization.

5 (2) The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-d of this chapter.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL REVITALIZATION.

§11-13D-1. Legislative finding and purpose.
§11-13D-3. Amount of credit allowed for industrial revitalization.
§11-13D-5. Forfeiture of unused tax credits, redetermination of credit allowed.
§11-13D-6. Transfer of eligible investment to successors.

§11-13D-1. Legislative finding and purpose.

1 The Legislature finds that the encouragement of growth and revitalization of existing industrial facilities in this
state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a business and occupation tax credit for industrial revitalization.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible industrial taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial revitalization of an industrial facility located in this state on the first day of July, one thousand nine hundred eighty-one.

(2) "Industrial business" means any privilege taxable under section two-b, article thirteen of this chapter and includes a manufacturing service taxable under section two-h of said article.

(3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state on the first day of July, one thousand nine hundred eighty-one, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business.

(4) "Industrial revitalization" means capital investment in an industrial facility located in this state on the first day of July, one thousand nine hundred eighty-one, to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any person liable for busi-
ness and occupation tax under article thirteen of this chapter, exercising any privilege taxable under section two-b of said article thirteen or providing a manufacturing service taxable under section two-h of said article thirteen.

(6) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(7) "Property purchased for industrial revitalization" means real property and improvements thereto and new tangible personal property, but only if such property is constructed or purchased for use as a component part of an ongoing industrial facility located within this state on the first day of July, one thousand nine hundred eighty-one. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax due under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by lease for a term of ten years or longer if used as a component part of an industrial revitalization, shall be included within this definition. "Property purchased for industrial revitalization" shall not include:

(A) Property which qualifies or was qualified for credit under article thirteen-c of this chapter;

(B) Repair costs including materials used in making the repair;

(C) Motor vehicles licensed by the department of motor vehicles;

(D) Airplanes;

(E) Off premise transportation equipment;

(F) Property which is primarily used outside this state;

(G) Property purchased prior to the first day of July, one
thousand nine hundred eighty-one. Property shall be deemed to have been purchased prior to said date only if:

(i) The physical construction, reconstruction or erection of the property was begun prior to said first day of July, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract existing on or before the thirtieth day of June, one thousand nine hundred eighty-one, and limited to the provision of such contract as of such date, binding on the taxpayer;

(ii) The machinery or equipment was owned by the taxpayer on or before the thirtieth day of June, one thousand nine hundred eighty-one, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect on such date;

(iii) In the case of leased property, there was a binding lease or contract to lease identifiable equipment in effect on or before the thirtieth day of June, one thousand nine hundred eighty-one;

(H) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion" under article thirteen-c of this chapter and used to qualify for the tax credit provided by that article.

§11-13D-3. Amount of credit allowed for industrial revitalization.

There shall be allowed to eligible industrial taxpayers a credit against the business and occupation taxes imposed by article thirteen of this chapter, for industrial revitalization. The amount of this credit shall be equal to ten percent of the cost of eligible investment made for industrial revitalization and shall reduce the business and occupation tax imposed under sections two-b and two-h, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per
taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed on the business of manufacturing, compounding or preparing for sale under section two-b, article thirteen of this chapter, and on the providing of a manufacturing service under section two-h, article thirteen of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this article and article thirteen-c of this chapter, the total amount of credits allowed shall not exceed the fifty percent rule outlined in subdivision (2) of this section.

(4) No carryover to a subsequent tax year or carryback to a prior tax year shall be allowed for the amount of any unused portion of the credit allowed under this article for the taxable year. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this article for any property purchased for industrial revitalization prior to the first day of July, one thousand nine hundred eighty-one.


(a) General.—The eligible investment in property purchased for industrial revitalization shall be the applicable percentage of the cost of each property purchased for the purpose of industrial revitalization which is placed in service or use in this state by the industrial taxpayer during the taxable year.

(b) Applicable percentage.—For the purpose of subsection (a), the applicable percentage for any property shall be determined under the following table:

If useful life is—The applicable percentage is—
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>4 years or more but less than 6 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>12</td>
<td>6 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>13</td>
<td>6 years or more but less than 8 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>14</td>
<td>8 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>15</td>
<td>8 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer.

(c) *Cost.*—For purposes of subsection (a), the cost of each property purchased for industrial revitalization shall be determined under the following rules:

1. **Trade-ins.**—Cost shall not include the value of any property given in trade or exchange for the property purchased for industrial revitalization.

2. **Damaged, destroyed or stolen property.**—If property is damaged or destroyed by fire, flood, storm or other casualty or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

3. **Rental property.**—The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

4. **Property purchased for multiple use.**—The cost of property purchased for multiple business use including use as a component part of a revitalized industrial business together with some other business or activity not eligible for credit under this article, shall be apportioned between such businesses and occupations. The amount apportioned to the revitalized industrial business shall be considered as an eligible investment subject to the conditions and limitations of this section.

5. **Self-constructed property.**—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation.
§11-13D-5. Forfeiture of unused tax credits, redetermination of credit allowed.

(a) Disposition of property or cessation of use.—If during any taxable year, property with respect to which a tax credit has been allowed under this article:

1. Is disposed of prior to the end of its useful life, as determined under section three of this article; or

2. Ceases to be used in the industrial business of the taxpayer in this state prior to the end of its useful life, as determined under said section three, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty or is stolen the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties.

(b) Cessation of operation of industrial facility.—If during any taxable year the industrial taxpayer ceases operation of an industrial facility in this state for which revitalization credit was allowed under this article before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall re-determine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with
its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties.

§11-13D-6. Transfer of eligible investment to successors.

(a) *Mere change in form of business.*—Property shall not be treated as disposed of under section five of this article by reason of a mere change in the form of conducting the industrial business as long as the property is retained in an industrial business in this state and the taxpayer retains a substantial interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the industrial facility or facilities transferred and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

(b) *Sale to successor.*—Property shall not be treated as disposed of under section five by reason of any sale to a successor business which continues to operate the industrial facility in this state. Upon sale the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation
electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer’s West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Carrier income tax credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-a shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer’s West Virginia taxable income.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9. Credits against tax.

(a) Credit for taxes imposed under article thirteen, chapter eleven of this code.—A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That
the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: Provided, however, That no such credit shall be allowed for any tax imposed under article thirteen with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Credit for taxes imposed under article twelve-a, chapter eleven of this code.—A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: Provided, however, That no such credit shall be allowed for any tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

CHAPTER 201

(H. B. 1084—By Mr. Burdette and Mr. Wells)

[Passed April 6, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


1 When the total tax for which a person is liable does not exceed fifty dollars for any month, he may make a quarterly return on or before the fifteenth day of the first month in the next succeeding quarter in lieu of monthly returns.

AN ACT to amend and reenact section six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nonin­toxicating beer and requiring brewers and distributors to file reports and pay barrel tax on estimated monthly sales and purchases; requiring brewers and distributors to file monthly reports of actual sales and purchases; providing a penalty for underestimation of monthly sales and pur­chases; and requiring brewers and distributors to keep records of all beer sales and purchases for a period of three years.

Be it enacted by the Legislature of West Virginia:

That section six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 16. NONINTOXICATING BEER.

§11-16-6. Barrel tax.

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five dollars and fifty cents on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state.

(b) On or before the tenth day of each month during the license period, every brewer who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the nonintoxicating beer commissioner, in the form prescribed by the commissioner, stating its total estimated sales of nonintoxicating beer to distributors within this state during that month, and at the same time shall pay the tax levied by this article on such estimated monthly sales. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the nonintoxicating beer commissioner, in the form prescribed by the commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for
such estimated monthly purchase: Provided, That the commissioner may allow, or require, a brewer who manu-
factures or produces nonintoxicating beer outside this state to file the required report and pay the required tax on behalf of its distributor or distributors. Any brewer or distributor who files a report under this subsection may adjust its monthly estimated sales or purchases report or reports by filing amended reports by the twenty-fifth day of the reporting month.

(c) Every brewer or distributor who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases, in a form and at a time prescribed by the commissioner, stating actual nonintoxicating beer sales and purchases and any other information which the commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases made in excess of the amount estimated for that month.

(d) Any brewer or distributor who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors shall keep all records which relate to the sale or purchase in this state of non-
intoxicating beer for a period of three years unless written approval for earlier disposal is granted by the com-
missioner.

CHAPTER 203
(S. B. 168—By Mr. Williams)

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

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to updating the meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


1 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 eighty-one, 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 eighty, 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 eighty-one, shall be given effect.

CHAPTER 204

(S. B. 169—By Mr. Williams)

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

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of terms used in the West Virginia corporation net income tax act.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

PART I. DEFINITIONS, IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.


(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 eighty-one, 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 eighty, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred eighty-one, 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 of this article: 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 of this article.

(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.
67  (15) The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

69  (16) The term “this state” means the state of West Virginia.

CHAPTER 205

(Com. Sub. for H. B. 932—By Mr. Tompkins and Mr. McCuskey)

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

AN ACT to amend and reenact section thirty-one, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for interest on judgments or decrees entered by any court of this state and establishing the rate of such interest.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. TRIAL.

§56-6-31. Interest on judgment or decree.

1 Except where it is otherwise provided by law, every judgment or decree for the payment of money entered by any court of this state shall bear interest from the date thereof, whether it be so stated in the judgment or decree or not: Provided, that if the judgment or decree, or any part thereof, is for special damages, as defined below, or for liquidated damages, the amount of such special or liquidated damages shall bear interest from the date the right to bring the same shall have accrued, as determined by the court. Special damages includes lost wages and income, medical expenses, damages to tangible personal property, and similar out-of-pocket expenditures, as determined by the court. The rate of interest shall be ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a
longer or shorter time, notwithstanding any other provisions of law.

CHAPTER 206
(Com. Sub. for H. B. 1255—By Mr. Speaker, Mr. See)

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

AN ACT to repeal sections nine and ten-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one of said chapter; to amend and reenact sections five, seven and ten, article five of said chapter; to amend and reenact sections one, three and eleven, article six of said chapter; to amend and reenact sections one and five, article six-a of said chapter; to amend and reenact section seven, article seven of said chapter; and to amend and reenact section seven, article ten of said chapter; all relating to unemployment compensation; definitions; increasing the taxable wage base; initial rate of contribution; increasing rates of contribution; exceptions; adjustment of accounts and rates; experience ratings; debit balance account rates; charging of surtax of one percent retroactive to the first day of January, one thousand nine hundred eighty-one; providing for termination of the surtax; qualification for benefits; disqualification for benefits for leaving work voluntarily without good cause involving fault on the part of the employer, misconduct, failing to apply for or accept suitable work; receiving annuity, pension or other retirement pay from base period or chargeable employer; knowingly making false statements to obtain benefits; partial unemployment; extended unemployment compensation benefits; definitions; disqualification for extended benefits in certain instances until individual has returned to covered employment and has been employed for at least thirty working days; comprehensive provision ineligibility for extended benefits where individual has failed to accept or apply for suitable work or has failed to actively engage in seeking work; limiting extended benefits to two weeks for person residing in a state where ex-
tended benefits are not in effect; increasing criminal penalties for false representations; and changing examiner's title to administrative law judge.

Be it enacted by the Legislature of West Virginia:

That sections nine and teen-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one of said chapter be amended and reenacted; that sections five, seven and ten, article five of said chapter be amended and reenacted; that sections one, three and eleven, article six of said chapter be amended and reenacted; that sections one and five, article six-a of said chapter be amended and reenacted; that section seven, article seven of said chapter be amended and reenacted; and that section seven, article ten of said chapter be amended and reenacted, all to read as follows:

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
6A. Extended Benefits Program.
7. Claim Procedure.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1 As used in this chapter, unless the context clearly requires otherwise:
3 "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.
6 "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.
9 "Average annual payroll" means the average of the last three annual payrolls of an employer.
11 "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.
“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.

“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.

“Employing 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 “em-
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 employ-
ment 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 “employ-
ment” 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 “employ-
ment” in this section, is performed after December thirty-one,
one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employ-
ment, 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 “employ-
ment” in this section, is performed after December thirty-one,
one thousand nine hundred seventy-seven;

(12) Any employing unit for which domestic service in em-
ployment, 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 sec-
tion, 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 performing 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 enter-
prise for which such service is performed; and (c) such in-
dividual 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 thou-
sand 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 super-
vised, 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 in-
strumentalities) 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 subdivisions
thereof or any of its instrumentalities or any instrumentality of
more than one of the foregoing or any instrumentality of any
foregoing and one or more other states or political subdivisions:
Provided, That such service is excluded from “employment” as
defined in the Federal Unemployment Tax Act by section
3306 (c) (7) of that act and is not excluded from “em-
ployment” under subdivision (15) of the exclusion from em-
ployment in this section; and

(c) Service performed after December thirty-one, one
thousand nine hundred seventy-seven, in the employ of a
nonprofit 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 or-
ganization 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 rea-
son 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 dif-
ferent weeks, whether or not such weeks were consecutive,
within 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 December
thirty-one, one thousand nine hundred seventy-one (except in
Canada and in the case of Virgin Islands after December thirty-
one, one thousand nine hundred seventy-one, and before Jan-
uary 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 American employer (other than service which
is deemed “employment” under the provisions of subdivision
(4), (5) or (6) of this definition of “employment” or the paral-
lel provisions 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 em-
ployed 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 pursuant to
sections 214 (c) and 101 (a) (15) (H) of the Immigration
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 main-
tain tractors, mechanized harvesting or crop-dusting equip-
ment, 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 sub-

(d) For the purposes of this subdivision (12), in the case
of any individual who is furnished by a crew leader to per-
form 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 em-
ployer 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 remuneration paid to
such individual by the crew leader (either on his own behalf
or on behalf of such other person) for the service in agricul-
tural labor performed for such other person;

(e) For the purposes of this subdivision (12), the term
“crew leader” means an individual who (i) furnishes indi-
duals 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 em-
ployee of such other person;

(13) The term "employment" shall include domestic ser-
vice 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 hun-
dred 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 con-
stitute 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 con-
stitute 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 instru-
mentalities of the United States to make payments into an 
unemployment fund under a state unemployment compensa-
tion law, all of the provisions of this law shall be applicable to 
such instrumentalities, and to service performed for such in-
strumentalities, 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 In-
surance Act and service with respect to which unemployment 
benefits are payable under an unemployment compensation 
system for maritime employees established by an act of Con-
gress. 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 acquir-
ing potential rights to unemployment compensation under 
an act of Congress, or who have, after acquiring potential 
rights to unemployment compensation under an act of Con-
gress, acquired rights to benefit under this chapter. Such 
agreement shall become effective ten days after such publica-
tions which shall comply with the general rules of the depart-
ment;

(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 sub-
division (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, in-
cluding 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 fifteen (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 commercial 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,
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ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(6) Domestic service in a private home, except as provided 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 eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an American 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, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund brokers or insurance companies, exclusive of industrial insurance 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 individuals 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 competitive 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 inmate
of the prison or correctional institution, and after December
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 provide 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
institute which normally maintains a regular faculty and cur-
riculum and normally has a regularly organized body of
students in attendance at the place where its educational
activities 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 re-
ferred 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 employment shall be deemed to be partially unemployed in any week in which due to lack of full time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:
(1) That part of the remuneration which, after remunera-
tion equal to three thousand dollars has been paid to an
individual by an employer with respect to employment during
any calendar year, is paid after December thirty-one, one
thousand nine hundred thirty-nine, and prior to January one,
one thousand nine hundred forty-seven, to such individual by
such employer with respect to employment during such
calendar year; or that part of the remuneration which, after
remuneration equal to three thousand dollars with respect to
employment after one thousand nine hundred thirty-eight, has
been paid to an individual by an employer during any
calendar year after one thousand nine hundred forty-six, is
paid to such individual by such employer during such calendar
year, except that for the purposes of sections one, ten,
eleven and thirteen, article six of this chapter, all remunera-
tion earned by an individual in employment shall be credited
to the individual and included in his computation of base
period wages: Provided, That notwithstanding the foregoing
provisions, on and after January one, one thousand nine
hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration
equal to three thousand six hundred dollars has been paid to
an individual by an employer with respect to employment
during any calendar year, is paid during any calendar year after
one thousand nine hundred sixty-one; and shall not include
that part of remuneration which, after remuneration 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; and shall not
include that part of remuneration which, after remuneration
equal to eight thousand dollars is paid during a calendar
year after one thousand nine hundred eighty, to an individual by
an employer or his predecessor with respect to employment
during any calendar year, is paid to such individual by such em-
ployer during such calendar year unless that part of the re-
muneration is subject to a tax under a federal law imposing a
tax against which credit may be taken for contributions re-
quired 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 unemploy-
ment compensation law of another state; or which as a con-
dition 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 remunera-
tion paid to an individual by an employer with respect to employment in another state or other states upon which con-
tributions 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, or eight 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 pre-
decessors: Provided further, That if the definition of the term “wages” as contained in section 3306(b) of the Internal Reve-
 nue Code of 1954 as amended: (a) Effective prior to January one, one thousand nine hundred sixty-two, to include re-
muneration in excess of three thousand dollars, or (b) effec-
tive on or after January one, one thousand nine hundred sixty-
two, to include remuneration in excess of three thousand six hundred dollars, or (c) effective on or after January one, one thousand nine hundred seventy-two, to include remuneration in excess of four thousand two hundred dollars, or (d) effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, or (e) effective on or after January one, one thousand nine hundred eighty, to include remuneration in excess of eight 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 remun-
eration paid in a calendar year to an individual by an em-
ployer 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 behalf 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) retirement, 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 individual in its employ (including any amount paid by an employer 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 expiration 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 of the tax imposed upon
an employer under section 3101 of the Federal Internal Reve-
 nue Code with respect to remuneration paid to an employee
for domestic service in a private home of the employer or
agricultural labor;

(7) Remuneration paid by an employer after December
thirty-one, one thousand nine hundred fifty-two, in any med-
ium 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 ser-
vice 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 un-
employed 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 vaca-
tion 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 employer’s
request where such vacation is in addition to the regular vaca-
tion 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 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.


§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

§21A-5-5. Rate of contribution.

On and after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.
On and after July one, one thousand nine hundred eighty-one, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred seventy-eight, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred eighty-one, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article: Provided, That any corporation or business entity engaged in the construction trades shall make payments to the fund at the rates applicable to such employer as of January first, one thousand nine hundred eighty-one, for wages paid with respect to employment on construction contracts entered into or for which bids are submitted in this state prior to April fifteenth, one thousand nine hundred eighty-one: Provided, however, That the burden shall be on such corporation or business entity to prove that any such contract was executed or that any such bid was submitted therefor prior to April fifteenth, one thousand nine hundred eighty-one.


(1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine
hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one percent of taxable wages; and on and after July first, one thousand nine hundred seventy-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in an employer's account after the computation date shall not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer's account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: Provided, however, That no employer's account shall be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits.

(3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such
experiences. For the purpose of fixing such contribution rates for each calendar year, the books of the department shall be closed on July thirty-one of the preceding calendar year, and any contributions thereafter paid, as well as benefits thereafter paid with respect to compensable weeks ending on or before June thirty of the preceding calendar year, shall not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July thirty-one of such preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to such July thirty-one, less than three and three-tenths percent, increased to three and three-tenths percent: Provided, however, That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for such payment or reporting of such information granted pursuant to a regulation of the commissioner authorizing such extension, shall be taken into account for the purposes of fixing contribution rates: Provided further, That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date shall be deemed to be the next succeeding business day: And provided further, That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January one of the calendar year in which such mistake or inadvertence is discovered, but payments made under any rate assigned prior to January one of such year shall not be deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(5) State and local government employers are hereby autho-
rized to enter into joint accounts and to maintain such joint account or accounts as if it or they constituted a single employer's account or accounts.

(6) Effective on and after July one, one thousand nine hundred eighty-one, if an employer has failed to furnish to the commissioner on or before July thirty-one of one thousand nine hundred eighty, and each year thereafter, the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to July one, one thousand nine hundred eighty-one, less than seven and five-tenths percent, increased to seven and five-tenths percent.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

On and after July one, one thousand nine hundred eighty-one, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's
rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

### TABLE II

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Rate Class</td>
<td>Percentage of Average Annual Payroll By Which Rate Credits Exceed Employer's Charges</td>
<td>Rate</td>
<td></td>
<td></td>
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<tr>
<td>30 (1)</td>
<td>0.0 to 6.0</td>
<td>4.5</td>
<td>3.5</td>
<td>2.5</td>
<td>1.5</td>
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<tr>
<td>31 (2)</td>
<td>6.0</td>
<td>4.1</td>
<td>3.1</td>
<td>2.1</td>
<td>1.1</td>
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<tr>
<td>32 (3)</td>
<td>7.0</td>
<td>3.9</td>
<td>2.9</td>
<td>1.9</td>
<td>0.9</td>
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<tr>
<td>33 (4)</td>
<td>8.0</td>
<td>3.7</td>
<td>2.7</td>
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<td>34 (5)</td>
<td>9.0</td>
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<td>3.3</td>
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<td>10.5</td>
<td>3.1</td>
<td>2.1</td>
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<tr>
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<tr>
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<td>12.5</td>
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<td>1.1</td>
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<td>42 (13)</td>
<td>14.0</td>
<td>1.9</td>
<td>0.9</td>
<td>0.0</td>
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</tr>
<tr>
<td>43 (14)</td>
<td>16.0</td>
<td>1.7</td>
<td>0.7</td>
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</tr>
<tr>
<td>44 (15)</td>
<td>18.0 and over</td>
<td>1.5</td>
<td>0.5</td>
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</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection (1), section seven of this article relat-
54 ing to the noncrediting of employers’ accounts with the first
55 seven-tenths or with the first four-tenths of one percent of
56 contributions paid; for the purpose of determining whether
57 or not an employer shall pay contributions at a rate in excess
58 of two and seven-tenths percent as hereinafter set forth, but
59 not for the purpose of determining such rate, the department
60 shall, only for the purpose set forth herein and not as a
61 credit to such account, add to the accounts of all employers
62 having a debit balance, contribution payments made by such
63 employers on and after July one, one thousand nine hundred
64 sixty-seven, which payments are not credited to employers’
65 accounts by reason of the provisions contained in subsection
66 (1), section seven of this article. If, after such contribution
67 payments have been added to such employers’ accounts, such
68 accounts continue to show a debit balance, such employers
69 shall make payments at a rate in excess of four and five-
70 tenths percent. If, after such contribution payments have
71 been added to such employers’ accounts, such accounts show
72 a credit balance, such employers shall make payments at the
73 rate of four and five-tenths percent. If, under the conditions
74 set forth in this paragraph, it is determined that an employer
75 shall pay contributions at a rate in excess of four and five-
76 tenths percent, the rate in excess of four and five-tenths percent
77 at which an employer shall pay contributions shall then be
determined solely under the conditions set forth in the follow-
79 ing paragraphs of this section. The provisions contained in
80 this paragraph shall in no way be considered as providing
81 for the crediting to an employer’s account, of amounts of
82 employer contribution payments which are expressly not
83 credited to employers’ accounts in subsection (1), section seven
84 of this article.

85 Effective on and after the computation date of June thirty,
86 one thousand nine hundred sixty-seven, all employers with
87 a debit balance account in which the benefits charged to their
88 account for all past years exceed the payments credited to their
89 account for such past years by an amount up to and includ-
90 ing ten percent of their average annual payroll, shall make
91 payments to the unemployment compensation fund at the
92 rate of three percent of wages paid by them with respect to
employment; except that effective on and after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July one, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.
Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year. "Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(b) Notwithstanding any other provision of this section, every employer subject to the provisions of this chapter shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment, beginning January first, one thousand nine hundred eighty-one, until such time that the commissioner determines that the fund assets equal or exceed the average benefits payments from the fund for the preceding three calendar years at which time such surtax shall be discontinued, and the commissioner shall so notify the employers subject to the provisions of this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.
§21A-6-3. Disqualification for benefits.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

2 (1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner.

3 (2) He has made a claim for benefits in accordance with the provisions of article seven of this chapter.

4 (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.

5 (4) He has been totally or partially unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total or partial unemployment.
UNEMPLOYMENT COMPENSATION

§21A-6.3. Disqualification for benefits.

Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

(1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision (1), an individual shall not be deemed to have left his most recent work voluntarily without good cause involving fault on the part of the employer, if such individual leaves his work with an employer with whom he has been employed at least thirty working days or more for the purpose of returning to, and if he in fact, within a fourteen-day calendar period, does return to, employment with the last preceding employer with whom he was previously employed within the past year prior to his return to work day, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Benefits paid to such individual under the provisions of this chapter shall, notwithstanding the provisions of subsection (2), section seven, article five of this chapter, and of subdivision (12) of this section three, be charged to the account of such last preceding employer with whom such individual was previously employed for thirty working days.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following his discharge...
following such week; or for the week in which he was dis- 
charged from his last thirty-day employing unit for mis-
conduct and the six weeks immediately following such week.
Such disqualification shall carry a reduction in the maximum 
benefit amount equal to six times the individual's weekly 
benefit. However, if the claimant returns to work in covered 
employment for thirty days during his benefit year, whether 
or not such days are consecutive, the maximum benefit 
amount shall be increased by the amount of the decrease 
imposed under the disqualification; except that:

If he were discharged from his most recent work for one of 
the following reasons; or if he were discharged from his last 
thirty day employing unit for one of the following reasons:
Misconduct consisting of willful destruction of his employer's 
property, assault upon the person of his employer or any em-
ployee of his employer, if such assault is committed at such 
individual's place of employment or in the course of employ-
ment; reporting to work in an intoxicated condition, or being 
intoxicated while at work; arson, theft, larceny, fraud or em-
bezzlement in connection with his work; or any other gross 
misconduct; he shall be and remain disqualified for benefits 
until he has thereafter worked for at least thirty days in cover-
ed employment: Provided, That for the purpose of this sub-
division the words "any other gross misconduct" shall include, 
but not be limited to, any act or acts of misconduct where the 
individual has received prior written warning that termination 
of employment may result from such act or acts.

(3) For the week in which he failed without good cause to 
apply for available, suitable work, accept suitable work when 
offered, or return to his customary self-employment when di-
rected to do so by the commissioner, and for the four weeks 
which immediately follow for such additional period as any 
offer of suitable work shall continue open for his acceptance. 
Such disqualification shall carry a reduction in the maximum 
benefit amount equal to four times the individual's weekly 
benefit amount.

(4) For a week in which his total or partial unemployment 
is due to a stoppage of work which exists because of a labor 
dispute at the factory, establishment or other premises at
which he was last employed, unless the commissioner is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workmen's compensation law of any state or under a similar law of the United States;

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of partici-
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110 pating in sports or athletic events or training or preparing to
111 so participate, for any week which commences during the per-
112 iod between two successive sport seasons (or similar periods)
113 if such individual performed such services in the first of such
114 seasons (or similar periods) and there is a reasonable assurance
115 that such individual will perform such services in the later of
116 such seasons (or similar periods).
117
118 (8) (a) Benefits shall not be paid on the basis of services
119 performed by an alien unless such alien is an individual who
120 has been lawfully admitted for permanent residence or other-
121 wise is permanently residing in the United States under color
122 of law (including an alien who is lawfully present in the United
123 States as a result of the application of the provisions of section
124 203 (a) (7) or section 212 (d) (5) of the Immigration and
125 Nationality Act: Provided. That any modifications to the pro-
126 visions of section 3304 (a) (14) of the Federal Unemployment
127 Tax Act as provided by Public Law 94-566 which specify other
128 conditions or other effective date than stated herein for the
129 denial of benefits based on services performed by aliens and
130 which modifications are required to be implemented under
131 state law as a condition for full tax credit against the tax im-
132 posed by the Federal Unemployment Tax Act shall be deemed
133 applicable under the provisions of this section;
134
135 (b) Any data or information required of individuals apply-
136 ing for benefits to determine whether benefits are not payable
137 to them because of their alien status shall be uniformly re-
138 quired from all applicants for benefits;
139
140 (c) In the case of an individual whose application for bene-
141 fits would otherwise be approved, no determination that bene-
142 fits to such individual are not payable because of his alien
143 status shall be made except upon a preponderance of the
144 evidence.
145
146 (9) For each week in which an individual is unemployed
147 because, having voluntarily left employment to attend a school,
148 college, university or other educational institution, he is at-
149 tending such school, college, university or other educational
150 institution, or is awaiting entrance thereto or is awaiting the
151 starting of a new term or session thereof, and until the indi-
152 vidual returns to covered employment.
which he was last employed, unless the commissioner is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

For the purpose of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute did not exist because of said labor dispute; and in such event the burden shall be upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workmen's compensation law of any state or under a similar law of the United States;

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of partici-
(8) (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act: Provided, That any modifications to the provisions of section 3304 (a) (14) of the Federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be deemed applicable under the provisions of this section;

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits;

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.
(10) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) For each week in which he is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress and/or remuneration in the form of an annuity, pension, or other retirement pay from a base period and/or chargeable employer or from any trust or fund contributed to by a base period and/or chargeable employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided, however, That there shall be no disqualification if in the individual's base period there are no wages which were paid by the base period and/or chargeable employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has been receiving remuneration in the form of an annuity, pension, or other retirement pay from a base period and/or chargeable employer or from a trust fund contributed to by a base period and/or chargeable employer.

(12) For fifty-two weeks, beginning with the date of the decision, if the commissioner finds such individual who within twenty-four calendar months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: Provided, That disqualification under this subdivision shall not preclude prosecution under section seven, article ten of this chapter.

(13) For the purposes of this section, an employer's account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after
the expiration of a period of disqualification for (a) discharge
for any of the causes set forth in subdivision (2) of this sec-
tion, or (b) failing without good cause to apply for available
suitable work, accept suitable work, when offered, or to return
to his customary self-employment when directed to do so by
the commissioner.


An eligible individual who is partially unemployed in any
week shall, upon claim therefor filed within such time and in
such manner as the commissioner may by regulation prescribe,
be paid benefits for such partial unemployment in an amount
equal to his weekly benefits rate, as determined in accordance
with section ten of this article, less that part of wages from
any source payable to him with respect to such week which
is in excess of twenty-five dollars (notwithstanding the refer-
ence to fifteen dollars in the definition of partial unemploy-
ment contained in section three, article one of this chapter):

Provided, That such amount of benefits if not a multiple of
one dollar shall be computed to the next higher multiple of one
dollar. Such partial benefits shall be paid to such individual
for the week for which he is claiming benefits without regard to
the provisions of subdivision one, section one of this article.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


§21A-6A-5. Total extended benefit amount.


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

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after whichever of the fol-
lowing weeks occurs first:

(i) A week for which there is a national "on" indicator; or

(ii) A week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever oc-
curs later:

(i) The third week after the first week for which there is
both a national "off" indicator and a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefits period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.

(2) There is a national "on" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(3) There is a national "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the more recent six calendar quarters ending before the close of such period.

(4) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding
twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) Equaled or exceeded four percent.

(5) There is a “state ‘off’ indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(B) Was less than four percent.

(6) “Rate of insured unemployment,” for purposes of subdivisions (4) and (5) of this section, means the percentage derived by dividing

(A) The average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(7) “Regular benefits” means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(8) “Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen
pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(B) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year which would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such bene-
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fits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(12) No individual shall be entitled to extended benefits during a period of unemployment if he was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article six of this chapter, which disqualification shall not be terminated until such individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

(13) (A) Notwithstanding any other provisions of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commissioner finds that during such period:

(i) He failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subdivision (13) (C) of this section) to which he was referred by the commissioner; or

(ii) He failed to actively engage in seeking work as prescribed under subdivision (13) (E).

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (13) (A) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (13) (A) (i) of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities: Provided, however, That the gross average weekly remuneration payable for the work must exceed the sum of:
(i) the individual's average weekly benefit amount (as determined under subdivision 13 (D) of this section plus.

(ii) the amount, if any, of supplemental unemployment benefits (as defined in section 501 (c) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(iii) pays wages equal to the higher of:

(I) the minimum wages provided by section (6) (a) (1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) the state or local minimum wage;

(iv) Provided that no individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability as described above if:

(I) the position was not offered to such individual in writing and was not listed with the employment service; or

(II) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision (13) (C) of this section; or

(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (13) (C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304 (a) (5) of the Internal Revenue
(E) For the purposes of subdivision (13) (A) (II) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (13) (C).

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

§21A-6A-5. Total extended benefit amount.

The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

2. Eleven times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year: Provided, That an individual filing for extended benefits through the Interstate Benefit Payment Plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits.
ARTICLE 7. CLAIM PROCEDURE.

§21A-7-7. Appeal tribunals.

1 The board shall determine the manner of hearing cases transferred or appealed from a decision of a deputy. All cases relating to labor disputes or to disqualification under subdivision (4), section three, article six of this chapter, and transferred to an appeal tribunal for initial determination, shall be heard by an appeal tribunal composed either of three administrative law judges assigned by the board, or the board itself, as the board may direct in particular cases or in particular areas. All other appeals from the decision of a deputy shall be heard by an appeal tribunal composed, as the board may direct in particular cases or in particular areas, of a single administrative law judge; a tribunal of three administrative law judges assigned by the board; a member of the board; or the board itself.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-7. False representations; penalties.

1 A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase a benefit, either for himself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, shall be guilty of a misdemeanor, and, upon conviction, punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not longer than thirty days, or both. Each false statement or representation, or failure to disclose a material fact, shall constitute a separate offense.

CHAPTER 207

(Com. Sub. for H. B. 785—By Mr. Harman, 33rd Dist.)

[Passed March 31, 1981: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding
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thereto a new article, designated article ten, relating to the jurisdiction of courts to determine child custody; setting certain requirements to be satisfied before a custody decree may issue; requiring notice to contestants and others; providing for methods of notice; procedures when simultaneous proceedings take place in foreign jurisdictions; allowing a court to refuse jurisdiction or stay proceedings under specified circumstances; requiring certain information from party or parties before the court; allowing for joinder of additional parties by order of the court; giving the court power to order personal appearances and to require another to pay the expenses of such appearances; providing for the admission of psychological testimony and assessing the cost thereof; setting forth res judicata effect of custody decrees; requiring recognition of decrees from foreign jurisdictions meeting requirements of this article; allowing modification of foreign decrees under certain circumstances; providing procedures for enforcement of foreign decrees; requiring a registry thereof and requiring certified copies upon request; allowing taking of testimony in foreign jurisdictions by request of a party or by the court sua sponte; providing for cooperation between jurisdictions concerning evidence and appearance of parties; requiring preservation of documents for use in foreign jurisdictions; requiring procurement of foreign decrees; providing for international application; requiring priority of questions of jurisdiction; and citation form.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. UNIFORM CHILD CUSTODY JURISDICTION ACT.

§48-10-1. Purposes: construction.
§48-10-2. Definitions.
§48-10-3. Jurisdiction.
§48-10-4. Notice and opportunity to be heard.
§48-10-5. Notice to persons outside state: submission to jurisdiction.
§48-10-6. Simultaneous proceedings in other states.
§48-10-7. Inconvenient forum.
§48-10-8. Jurisdiction declined by reason of conduct.
§48-10-9. Information under oath to be submitted to the court.
§48-10-10. Additional parties.
§48-10-11. Appearance of parties and the child.
§48-10-16. Filing and enforcement of custody decree of another state.
§48-10-17. Registry of out-of-state custody decrees and proceedings.
§48-10-18. Certified copies of custody decree.
§48-10-21. Assistance to courts of other states.
§48-10-23. Request for court records of another state.
§48-10-25. Priority.

§48-10-1. Purposes; construction.

(a) The general purposes of this article are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible;
(7) Facilitate the enforcement of custody decrees of other states;

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerning the same child; and

(9) Make uniform the law of those states which enact it.

(b) This article shall be construed to promote the general purposes stated in this section.

§48-10-2. Definitions.

As used in this article:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree;

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent or a person acting as parent for at least six consecutive months and, in the case of a child less than six months old, the state in which the child lived from birth with any of the persons named. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;
(6) "Initial decree" means the first custody decree concerning a particular child;

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "Physical custody" means actual possession and control of a child;

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

§48-10-3. Jurisdiction.

(a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) This state (i) is the home state of the child at the time of commencement of the proceeding or (ii) has been the child's home state within six months before commencement of the proceeding, the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons and a parent or person acting as parent continues to live in this state; or

(2) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships; or

(3) The child is physically present in this state, and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected
to or threatened with mistreatment or abuse or is otherwise
neglected or dependent; or

(4) (i) It appears that no other state would have jurisdiction
under prerequisites substantially in accordance with subdi-
vision (1), (2) or (3) of this subsection, or another state
has declined to exercise jurisdiction on the ground that this
state is the more appropriate forum to determine the custody
of the child, and (ii) it is in the best interest of the child that
this court assume jurisdiction.

(b) Except under subdivisions (3) and (4) of subsection
(a), physical presence in this state of the child, or of the
child and one of the contestants, is not alone sufficient to
confer jurisdiction on a court of this state to make a child
custody determination.

(c) Physical presence of the child, while desirable, is
not a prerequisite for jurisdiction to determine his custody.

§48-10-4. Notice and opportunity to be heard.

Before making a decree under this article, reasonable
notice and opportunity to be heard shall be given to the con-
testants, any parent whose parental rights have not been pro-
viously terminated and any person who has physical custody
of the child. If any of these persons is outside this state, notice
and opportunity to be heard shall be given pursuant to section
five of this article.

§48-10-5. Notice to persons outside state; submission to juris-
diction.

(a) Notice required for the exercise of jurisdiction over a
person outside this state shall be given in a manner reason-
ably calculated to give actual notice and may be:

(1) By personal delivery outside this state in the manner
prescribed for service of process within this state;

(2) In the manner prescribed by the law of the place in
which the service is made for service of process in that place
in an action in any of its courts of general jurisdiction;
(3) By any form of mail addressed to the person to be served and requesting a receipt; or

(4) As directed by the court, including publication, if other means of notification are ineffective.

(b) Notice under this section shall be served, mailed, or delivered, or last published at least twenty days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, by the order pursuant to which the service is made or by the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

§48-10-6. Simultaneous proceedings in other states.

(a) A court of this state shall not exercise its jurisdiction under this article if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this article, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under section nine of this article and shall consult the child custody registry established under section sixteen of this article concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed juris-
20 diction, it shall stay the proceeding and communicate with the 21 court in which the other proceeding is pending to the end that 22 the issue may be litigated in the more appropriate forum and 23 that information be exchanged in accordance with sections 24 nineteen, twenty, twenty-one and twenty-two of this article. 25 If a court of this state has made a custody decree before being 26 informed of a pending proceeding in a court of another state, 27 it shall immediately inform that court of the fact. If the court 28 is informed that a proceeding was commenced in another state 29 after it assumed jurisdiction, it shall likewise inform the other 30 court to the end that the issues may be litigated in the more 31 appropriate forum.

§48-10-7. Inconvenient forum.

1 (a) A court which has jurisdiction under this article to 2 make an initial or modification decree may decline to 3 exercise its jurisdiction any time before making a decree if 4 it finds that it is an inconvenient forum to make a custody 5 determination under the circumstances of the case and that a 6 court of another state is a more appropriate forum.

7 (b) A finding of inconvenient forum may be made upon 8 the court's own motion or upon motion of a party or a guardian 9 ad litem or other representative of the child.

10 (c) In determining if it is an inconvenient forum, the 11 court shall consider if it is in the interest of the child 12 that another state assume jurisdiction. For this purpose it 13 may take into account the following factors, among others:

14 (1) If another state is or recently was the child's home 15 state;

16 (2) If another state has a closer connection with the 17 child and his family or with the child and one or more of 18 the contestants;

19 (3) If substantial evidence concerning the child's present 20 or future care, protection, training and personal relationships 21 is more readily available in another state;

22 (4) If parties have agreed on another forum which is no 23 less appropriate; and
(5) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in section one of this article.

(d) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this article if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing this state of a finding of inconvenient forum be-
cause a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact.

§48-10-8. Jurisdiction declined by reason of conduct.

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

§48-10-9. Information under oath to be submitted to the court.

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) He has participated (as a party, witness or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and
(3) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

§48-10-10. Additional parties.

If the court learns from information furnished by the parties pursuant to section nine of this article or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with section five of this article.

§48-10-11. Appearance of parties and the child.

(a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under section five of this article include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is
directed to appear under subsection (b) of this section or desires
to appear personally before the court with or without the
child, the court may require another party to pay to the clerk
of the court travel and other necessary expenses of the party
so appearing and of the child if this is just and proper under
the circumstances.


In a proceeding under this article in which a circuit court
in this state must determine or advise upon the issue of
custody, testimony by a licensed psychologist relevant to a
child’s (a) academic skills and progress, (b) socialization,
(c) physical well-being, and (d) emotional and mental status
shall be admissible, subject however to all the rules of
evidence ordinarily applicable to such testimony: Provided,
That for the sole purpose of evidence relevant to the child’s
academic skills and progress, the testimony of a school
psychologist shall be admissible. Any party may move for
a psychological evaluation of the child at such reasonable
time and place as the court shall, for good cause, order, for
the purpose of preparing such testimony. Unless it appears
that all the parties litigating the issue of custody desire to
adduce evidence resulting from such an evaluation, the court
may, on its own motion, order an independent evaluation
by a licensed psychologist selected by agreement of the
parties or, in the absence of such agreement, by the court.
The court may assess as a cost of the proceeding the reason-
able costs of transportation to the place of such evaluation,
the evaluation, and the attendance in court by the psychologist
for the giving of evidence, including expert witness fees.
Costs shall be allocated among the parties as equity may,
in the discretion of the court, require.


A custody decree rendered by a court of this state which
had jurisdiction under section three of this article binds all
parties who have been served in this state or notified in ac-
cordance with section five of this article or who have sub-
mitted to the jurisdiction of the court, and who have been
given an opportunity to be heard. As to these parties the cus-
The custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this article.


The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this article or which was made under factual circumstances meeting the jurisdictional standards of this article, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this article.


(a) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this article or has declined to assume jurisdiction to modify the decree and (2) the court of this state has jurisdiction.

(b) If a court of this state is authorized under subsection (a) of this section and section eight of this article to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with section twenty-two of this article.

§48-10-16. Filing and enforcement of custody decree of another state.

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of a circuit court, or of any court of this state of competent jurisdiction. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.
(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

§48-10-17. Registry of out-of-state custody decrees and proceedings.

The clerk of each circuit court shall maintain a registry in which he shall enter the following:

1. Certified copies of custody decrees of other states, received for filing;
2. Communications as to the pendency of custody proceedings of other states;
3. Communications concerning a finding of inconvenient forum by a court of another state; and
4. Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

§48-10-18. Certified copies of custody decree.

The clerk of the circuit court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.


In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

1. (a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid out of the treasury of the state upon certificate of the court wherein the case is pending.

2. (b) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

§48-10-21. Assistance to courts of other states.

1. (a) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

2. (b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

3. (c) Upon request of the court of another state a competent court of this state may order a person in this state to appear
alone or with the child in a custody proceeding in another
state. The court may condition compliance with the request
upon assurance by the other state that state travel and other
necessary expenses will be advanced or reimbursed.


In any custody proceeding in this state the court shall
preserve the pleadings, orders and decrees, any record that
has been made of its hearings, social studies and other perti-
nent documents until the child reaches eighteen years of age.
Upon appropriate request of the court of another state the
court shall forward to the other court certified copies of any
or all of such documents.

§48-10-23. Request for court records of another state.

If a custody decree has been rendered in another state
concerning a child involved in a custody proceeding pending
in a court of this state, the court of this state upon taking
jurisdiction of the case shall request of the court of the other
state a certified copy of the transcript of any court record and
other documents mentioned in section twenty-one of this article.


The general policies of this article extend to the internation-
al area. The provisions of this article relating to the recogni-
tion and enforcement of custody decrees of other states apply
to custody decrees and decrees involving legal institutions
similar in nature to custody institutions rendered by appro-
priate authorities of other nations if reasonable notice and
opportunity to be heard were given to all affected persons.

§48-10-25. Priority.

Upon request of a party to a custody proceeding which
raises a question of existence or exercise of jurisdiction under
this article, the case shall be given calendar priority and
handled expeditiously.


This article may be cited as the "Uniform Child Custody
Jurisdiction Act."
CHAPTER 208

(H. B. 987—By Mr. Brenda and Mr. Gilliam)

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

AN ACT to amend and reenact section eighty-two, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article nine, chapter forty-seven of said code, relating to revising the uniform limited partnership act; definitions; name of limited partnership and reservation thereof; specifying office and agent to be maintained by limited partnership; requiring records to be kept and availability thereof; nature of partnership business; business transactions of partner with partnership; execution, amendment, cancellation, filing, notice, and delivery of certificate of limited partnership; liability for false statement in certificate; admission of additional limited partners; voting by limited partners; liability of limited partner to third parties; person erroneously believing himself a limited partner; right of limited partner to information; admission of additional general partners; events of withdrawal of general partners; general powers and liabilities of general partners; contributions by general partner; voting by general partners; liability for contribution; sharing of profits, losses and distributions; interim distributions; withdrawal of general or limited partner; distribution upon withdrawal; distribution in kind; right to distribution; limitations on distribution; liability upon return of contribution; nature of partnership interest; assignment of partnership interest; rights of creditor; right of assignee to become limited partner; power of estate of deceased or incompetent partner; nonjudicial and judicial dissolution; winding up of affairs; distribution of assets; law governing foreign limited partnerships; registration of foreign limited partnerships and names thereof; issuance of registration; changes and amendments to registration; cancellation of registration; transaction of business without registration; action by the secretary of state to restrain a foreign limited partnership; right of action by limited partner; proper plaintiff; pleading; expenses; construction and application of article; short title of
article; effective date of article; and rules for cases not provided for in article.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

47. Regulation of Trade.

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

§11-12-82. Annual fee of secretary of state as attorney-in-fact.

Every foreign corporation, every foreign limited partnership, every domestic corporation whose principal place of business or chief works is located without the state, and every domestic limited partnership whose principal place of business is located without the state, shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such corporation or limited partnership, which fee shall be due and payable at the same time, collected by the same officers, and accounted for in the same way, as the annual license tax imposed on corporations under this article, payable to the secretary of state as statutory attorney-in-fact.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§49-9-1. Definitions.
§47-9-2. Name of limited partnership.
§47-9-3. Reservation of name.
§47-9-4. Secretary of state as attorney-in-fact.
§47-9-5. Office and records.
§47-9-9. Amendment to certificate.
§47-9-12. Judicial amendment or cancellation of certificate.
§47-9-16. Delivery of certificates to limited partners.
§47-9-17. Admission of additional limited partners.
§47-9-20. Person erroneously believing himself limited partner.
§47-9-21. Right of limited partner to information.
§47-9-22. Admission of additional general partners.
§47-9-23. Events of withdrawal of general partner.
§47-9-25. Contributions by general partner.
§47-9-27. Form of contribution.
§47-9-29. Sharing of profits and loses.
§47-9-31. Interim distributions.
§47-9-32. Withdrawal of general partner.
§47-9-33. Withdrawal of limited partner.
§47-9-34. Distribution upon withdrawal.
§47-9-35. Distribution in kind.
§47-9-36. Right to distribution.
§47-9-37. Limitations on distribution.
§47-9-38. Liability upon return of contribution.
§47-9-40. Assignment of partnership interest.
§47-9-41. Rights of creditor.
§47-9-42. Right of assignee to become limited partner.
§47-9-43. Power of estate of deceased or incompetent partner.
§47-9-44. Nonjudicial dissolution.
§47-9-46. Winding up of affairs.
§47-9-47. Distribution of assets.
§47-9-48. Law governing foreign limited partnerships.
§47-9-49. Registration of foreign limited partnership.
§47-9-50. Issuance of registration; filing in the office of the clerk of the county commission.
§47-9-51. Registration of name of foreign limited partnership.
§47-9-52. Foreign limited partnership—Changes and amendments to registration.
§47-9-53. Foreign limited partnership—Cancellation of registration.
§47-9-54. Foreign limited partnership—Transaction of business without registration.
§47-9-55. Action by attorney general to restrain a foreign limited partnership.

§47-9-56. Right of action by limited partner.

§47-9-57. Proper plaintiff in derivative action.

§47-9-58. Pleasing in derivative action.

§47-9-59. Expenses in derivative action.

§47-9-60. Construction and application of article.

§47-9-61. Short title of article.

§47-9-62. Effective date of article.

§57-9-63. Rules for cases not provided for in article.

§47-9-1. Definitions.

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

1. (1) “Certificate of limited partnership” means the certificate referred to in section eight of this article and the certificate as amended;

2. (2) “Contribution” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;

3. (3) “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

4. (4) “Foreign limited partnership” means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

5. (5) “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

6. (6) “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner;

7. (7) “Limited partnership” and “domestic limited partnership” means a partnership formed by two or more persons
under the laws of this state and having one or more general
partners and one or more limited partners;
(8) "Partner" means a limited or general partner;
(9) "Partnership agreement" means any valid agreement,
written or oral, of the partners as to the affairs of a limited
partnership and the conduct of its business;
(10) "Partnership interest" means a partner's share of the
profits and losses of a limited partnership and the right to re-
ceive distributions of partnership assets;
(11) "Person" means a natural person, partnership, limited
partnership (domestic or foreign), trust, estate, association or
corporation; and
(12) "State" means a state, territory or possession of the
United States, the District of Columbia or the Commonwealth
of Puerto Rico.

§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its
certificate of limited partnership:

(1) Shall contain without abbreviation the words "limited
partnership";
(2) May not contain the name of a limited partner unless
(i) it is also the name of a general partner or the corporate
name of a corporate general partner, or (ii) the business of the
limited partnership had been carried on under the name before
the admission of that limited partner;
(3) May not contain any word or phrase indicating or im-
plying that it is organized other than for a purpose stated in
its certificate of limited partnership;
(4) May not be the same as, or deceptively similar to the
name of any corporation or limited partnership organized
under the laws of this state or licensed or registered as a
foreign corporation or limited partnership in this state; and
(5) May not include the words "engineer," "engineers,"
"engineering" or any combination of those words unless the
purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as defined therein.

§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for a period of one hundred twenty days. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§47-9-4. Secretary of state as attorney-in-fact.

(a) The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership.
No act of such limited partnership appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after 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 the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him fewer than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by section eighty-two, article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

(b) Any foreign limited partnership that conducts affairs or does or transacts business in this state is conclusively presumed to have appointed the secretary of state as its attorney-in-fact with authority to accept service of notice and process on its behalf and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this subsection. No act of such foreign limited partnership appointing the secretary of state as its attorney-in-fact shall be necessary. Immediately after 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
return receipt requested, to such foreign limited partnership
at the address of its principal office, which address shall be
stated in such process or notice. Such service or acceptance of
such process or notice shall be sufficient if such return receipt
is signed by an agent or employee of such foreign limited part-
nership, or the registered or certified mail so sent by the sec-
etary of state is refused by the addressee and the registered or
certified mail is returned to the secretary of state, or to
his office, showing thereon the stamp of the United States
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. No process or notice may be served on the secretary
of state or accepted by him 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 proceedings.

For the purpose of this section, a foreign limited partnership
shall be deemed to be conducting affairs or doing or trans-
acting business herein (1) if such foreign limited partnership
makes a contract to be performed, in whole or in part, by any
party thereto, in this state, (2) if such foreign limited part-
nership commits a tort in whole or in part in this state, or (3) if
such foreign limited partnership manufactures, sells, offers for
sale or supplies any product in a defective condition and such
product causes injury to any person or property within this
state notwithstanding the fact that such foreign limited part-
nership had no agents, servants or employees or contacts
within this state at the time of said injury. The making of such
contract, the committing of such tort or the manufacture or
sale, offer of sale or supply of such defective product as here-
above described shall be deemed to be the agreement of such
foreign limited partnership that any notice or process served
upon, or accepted by, the secretary of state pursuant to the
next preceding paragraph of this section in any action or pro-
ceeding against such foreign limited partnership arising from,
or growing out of, such contract, tort, or manufacture or sale,
§ 47-9-5. Office and records.

(a) Each limited partnership shall continuously maintain in this state an office, which may but need not be a place of its business in this state, at which shall be kept the following records:

(1) A current list of the full name and last known business address of each partner set forth in alphabetical order;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;

(3) A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years; and

(4) A copy of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years.

(b) Such records shall be available for inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.


A limited partnership may carry on any business which a partnership without limited partners may carry on, except the business of banking, brokerage or making insurance.


Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the secretary of state and set forth:

1. The name of the limited partnership;
2. The general character of its business;
3. The address of the office and the name and address of the agent for service of process required to be maintained by section four of this article;
4. The name and the business address of each partner, specifying separately the general partners and limited partners;
5. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;
6. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
7. Any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;
8. If agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of, or the method of determining, the distribution to which he may be entitled respecting his partnership interest, and the terms and conditions of the termination and distribution;
9. Any right of a partner to receive distributions of property, including cash from the limited partnership;
10. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution;
11. Any time at which or events upon the happening of
§47-9-9. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(1) The name of the limited partnership;
(2) The date of the filing of the certificate; and
(3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) A change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution;
(2) The admission of a new partner;
(3) The withdrawal of a partner; or
(4) The continuation of the business under section forty-four of this article after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when
made or that any arrangements or other facts described have
changed, making the certificate inaccurate in any respect, shall
promptly amend the certificate, but an amendment to show
a change of address of a limited partner need be filed only
once every twelve months.

(d) A certificate of limited partnership may be amended
at any time for any other proper purpose the general partners
determine.

(e) No person has any liability because an amendment to
a certificate of limited partnership has not been filed to reflect
the occurrence of any event referred to in subsection (b) of
this section if the amendment is filed within the thirty-day
period specified in subsection (b).


A certificate of limited partnership shall be cancelled upon
the dissolution and the commencement of winding up of the
partnership or at any other time there are no limited partners.
A certificate of cancellation shall be filed in the office of the
secretary of state and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partner-
ship;

(3) The reason for filing the certificate of cancellation;

(4) The effective date, which shall be a date certain, of
cancellation if it is not to be effective upon the filing of the
certificate; and

(5) Any other information the general partners filing the
certificate determine.


(a) Each certificate required by this article to be filed in
the office of the secretary of state shall be executed in the
following manner:

(1) An original certificate of limited partnership must
be signed by all partners named therein;
A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased; and

(3) A certificate of cancellation must be signed by all general partners;

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

§47-9-12. Judicial amendment or cancellation of certificate.

If a person required by section eleven of this article to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the appropriate circuit court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.


(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the secretary of state. No photostatic copies may be used. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(1) Endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;
12 (2) File one duplicate original in his office; and
13 (3) Return the other duplicate original to the person who
14 filed it or his representative.
15 (b) Upon the filing of a certificate of amendment, or
16 judicial decree of amendment, in the office of the secretary
17 of state the certificate of limited partnership shall be amended
18 as set forth therein, and upon the effective date of a certificate
19 of cancellation, or a judicial decree thereof, the certificate of
20 limited partnership is cancelled.
21 (c) The certificate of limited partnership and any certif-
22 icates of amendment or cancellation or of any judicial decree
23 of amendment or cancellation, or a duly certified copy thereof,
24 shall be recorded in the office of the clerk of the county com-
25 mission of the county in which such office, as required by
26 section five of this article, is located.


1 If any certificate of limited partnership or certificate of
2 amendment or cancellation contains a false statement, one who
3 suffers loss by reliance on the statement may recover damages
4 for the loss from:

5 (1) Any person who executes the certificate, or causes
6 another to execute it on his behalf, and knew, and any
7 general partner who knew or should have known, the statement
8 to be false at the time the certificate was executed; and

9 (2) Any general partner who thereafter knows or should
10 have known that any arrangement or other fact described in
11 the certificate has changed, making the statement inaccurate
12 in any respect within a sufficient time before the statement
13 was relied upon reasonably to have enabled that general
14 partner to cancel or amend the certificate, or to file a peti-
15 tion for its cancellation or amendment under section twelve of
16 this article.


1 The fact that a certificate of limited partnership is on
2 file in the office of the secretary of state is notice that the
3 partnership is a limited partnership and the persons designated
4 therein as limited partners are limited partners, but it is not
5 notice of any other fact.

§47-9-16. Delivery of certificates to limited partners.

1 Upon the return by the secretary of state pursuant to section
2 thirteen of this article of a certificate marked “Filed,” the
3 general partners shall promptly deliver or mail a copy of the
4 certificate of limited partnership and each certificate to each
5 limited partner unless the partnership agreement provides
6 otherwise.

§47-9-17. Admission of additional limited partners.

1 (a) After the filing of a limited partnership’s original
2 certificate of limited partnership, a person may be admitted
3 as an additional limited partner:

4 (1) In the case of a person acquiring a partnership in-
5 terest directly from the limited partnership, upon the com-
6 pliance with the partnership agreement or, if the partnership
7 agreement does not so provide, upon the written consent of
8 all partners; and

9 (2) In the case of an assignee of a partnership interest
10 of a partner who has the power as provided in section
11 forty-two of this article to grant the assignee the right to
12 become a limited partner, upon the exercise of that power
13 and compliance with any conditions limiting the grant or
14 exercise of the power.

15 (b) In each case under subsection (a) of this section,
16 the person acquiring the partnership interest becomes a limited
17 partner only upon amendment of the certificate of limited
18 partnership reflecting that fact.


1 Subject to section nineteen of this article, the partnership
2 agreement may grant to all or a specified group of the limited
3 partners the right to vote, on a per capita or other bases,
4 upon any matter.


1 (a) Except as provided in subsection (d) of this section,
2 a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business: Provided, That if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by doing one or more of the following:

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner;

(2) Consulting with and advising a general partner with respect to the business of the limited partnership;

(3) Acting as surety for the limited partnership;

(4) Approving or disapproving an amendment to the partnership agreement; or

(5) Voting on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) A change in the nature of the business; or

(v) The removal of a general partner.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to
be used in the name of the limited partnership, except under circumstances permitted by subdivision (2), section two of this article, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

§47-9-20. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section, is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the thirty day period for filing an amendment relating to the person as a limited partner under section nine of this article, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

§47-9-21. Right of limited partner to information.

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by section five of this article;

(2) Obtain from the general partners from time to time
upon reasonable demand (i) true and full information regard-
ing the state of the business and financial condition of the
limited partnership, (ii) promptly after becoming available,
a copy of the limited partnership's federal, state and local in-
come tax returns from each year, and (iii) other information
regarding the affairs of the limited partnership as is just and
reasonable.

§ 47-9-22. Admission of additional general partners.

After the filing of a limited partnership's original certificate
of limited partnership, additional general partners may be ad-
mitted only with the specific written consent of each partner.

§ 47-9-23. Events of withdrawal of general partner.

Except as approved by the specific written consent of all
partners at the time, a person ceases to be a general partner
of a limited partnership upon the happening of any of the
following events:

(1) The general partner withdraws from the limited part-
nership as provided in section thirty-two of this article;

(2) The general partner ceases to be a member of the limit-
ed partnership as provided in section forty of this article;

(3) The general partner is removed as a general partner in
accordance with the partnership agreement;

(4) Unless otherwise provided for in the certificate of limited
partnership, the general partner (i) makes an assignment for
the benefit of creditors; (ii) files a voluntary petition in bank-
ruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files
a petition or answer seeking for himself any reorganization,
arrangement, composition, readjustment, liquidation, dissolu-
tion or similar relief under any statute, law or regulation;
(v) files an answer of other pleading admitting to failing to
contest the material allegations of a petition filed against
him in any proceeding of this nature; or (vi) seeks, consents
to, or acquiesces in the appointment of a trustee, receiver or
liquidator of the general partner or of all or any substantial
part of his properties;
(5) Unless otherwise provided in the certificate of limited partnership, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person, (i) his death; or (ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

**§47-9-24. General powers and liabilities of general partner.**

Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

**§47-9-25. Contributions by general partner.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses
of and in distributions from the limited partnership as a gen-
eral partner. A general partner also may make contributions
to and share in profits, losses and distributions as a limited
partner. A person who is both a general partner and a limited
partner has the rights and powers and is subject to the restric-
tions and liabilities of a general partner and, except as pro-
vided in the partnership agreement, also has the powers and is
subject to the restrictions of a limited partner to the extent of
his participation in the partnership as a limited partner.


The partnership agreement may grant to all or certain
identified general partners the right to vote, on a per capita
or any other basis, separately or with all or any class of the
limited partners on any matter.

§47-9-27. Form of contribution.

The contribution of a partner may be in cash, property,
or services rendered, or a promissory note or other obligation
to contribute cash or property or to perform services.


(a) Except as provided in the certificate of limited partner-
ship, a partner is obligated to the limited partnership to
perform any promise to contribute cash or property or to
perform services, even if he is unable to perform because of
death, disability or any other reason. If a partner does not
make the required contribution of property or services, he is
obligated at the option of the limited partnership to contribute
cash equal to the portion of the value, as stated in the certificate
of limited partnership, of the stated contribution that has not
been made.

(b) Unless otherwise provided in the partnership agreement,
the obligation of a partner to make a contribution or return
money or other property paid or distributed in violation of
this article may be compromised only by consent of all the
partners. Notwithstanding the compromise, a creditor of a
limited partnership who extends credit or whose claim arises
after the filing of the certificate of limited partnership or an
amendment thereto which, in either case, reflects the obliga-
tion, and before the amendment or cancellation thereof to
reflect the compromise, may enforce the original obligation.

§47-9-29. Sharing of profits and losses.

The profits and losses of a limited partnership shall be
allocated among the partners, and among classes of partners,
in the manner provided in the partnership agreement. If the
partnership agreement does not so provide, profits and
losses shall be allocated on the basis of the value, as stated
in the certificate of limited partnership, of the contributions
made by each partner to the extent they have been received
by the partnership and have not been returned.


Distributions of cash or other assets of a limited partner-
ship shall be allocated among the partners and classes of
partners in the manner provided in the partnership agreement.
If the partnership agreement does not so provide, distributions
shall be made on the basis of the value, as stated in the cer-
tificate of limited partnership, of the contributions made by
each partner to the extent they have been received by the
partnership and have not been returned.

§47-9-31. Interim distributions.

Except as provided in this article, a partner is entitled
to receive distributions from a limited partnership before his
withdrawal from the limited partnership and before the
dissolution and winding up thereof:

(1) To the extent and at the times or upon the happening
of the events specified in the partnership agreement; and

(2) If any distribution constitutes a return of part of his
contribution under subsection (b), section thirty-eight of this
article, to the extent and at the times or upon the happening
of the events specified in the certificate of limited partnership.

§47-9-32. Withdrawal of general partner.

A general partner may withdraw from a limited partnership
at any time by giving written notice to the other partners, but
3 if the withdrawal violates the partnership agreement, the
4 limited partnership may recover from the withdrawing general
5 partner damages for breach of the partnership agreement and
6 offset the damages against the amount otherwise distributable
7 to him.

§47-9-33. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership
at any time or upon the happening of events specified in the
certificate of limited partnership and in accordance with the
partnership agreement. If the certificate does not specify
the time or the events upon the happening of which a limited
partner may withdraw or a definite time for the dissolution
and winding up of the limited partnership, a limited partner
may withdraw upon not less than six months' prior written
notice to each general partner at his address on the books
of the limited partnership at its office in this state.

§47-9-34. Distribution upon withdrawal.

Except as provided in this article, upon withdrawal any
withdrawing partner is entitled to receive any distribution to
which he is entitled under the partnership agreement, and, if
not otherwise provided in the agreement, he is entitled to re-
ceive within a reasonable time after withdrawal the fair value
of his interest in the limited partnership as of the date of
withdrawal based upon his right to share in distributions from
the limited partnership.

§47-9-35. Distribution in kind.

Except as provided in the certificate of limited partnership,
a partner, regardless of the nature of his contribution, has
no right to demand and receive any distribution from a limited
partnership in any form other than cash. Except as provided
in the partnership agreement, a partner may not be compelled
to accept a distribution of any asset in kind from a limited
partnership to the extent that the percentage of the asset
distributed to him exceeds a percentage of that asset which
is equal to the percentage in which he shares in distributions
from the limited partnership.
§47-9-36. Right to distribution.

1 At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

§47-9-37. Limitations on distribution.

1 A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

§47-9-38. Liability upon return of contribution.

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this article, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this article, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the certificate of limited partnership, of his contribution which has not been distributed to him.


1 A partnership interest is personal property.

§47-9-40. Assignment of partnership interest.

1 Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assign-
ment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

§47-9-41. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

§47-9-42. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in section thirty-eight of this article: Provided, That the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under sections fourteen and twenty-eight of this article.
§47-9-43. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

§47-9-44. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

1. At the time or upon the happening of events specified in the certificate of limited partnership;

2. The written consent of all partners;

3. An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one more additional general partners if necessary or desired; or

4. Entry of a decree of judicial dissolution under section forty-five of this article.


On application by or for a partner, the appropriate circuit court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.
§47-9-46. **Winding up of affairs.**

1 Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs: *Provided*, That the appropriate circuit court may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

§47-9-47. **Distribution of assets.**

1 Upon the winding up of a limited partnership, the assets shall be distributed as follows:

2 (1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section thirty-one or thirty-four of this article;

3 (2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under said section thirty-one or thirty-four; and

4 (3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

§47-9-48. **Law governing foreign limited partnerships.**

1 Subject to the Constitution of this state, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

§47-9-49. **Registration of foreign limited partnership.**

1 Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration
as a foreign limited partnership, signed and sworn to by a
general partner and setting forth:

(1) The name of the foreign limited partnership and, if
different, the name under which it proposes to register and
transact business in this state;

(2) The state and date of its formation;

(3) The general character of the business it proposes to
transact in this state;

(4) The name and address of any agent for service of
process on the foreign limited partnership whom the foreign
limited partnership elects to appoint: Provided, That the
agent must be an individual resident of this state, a domestic
corporation, or a foreign corporation having a place of business
in and authorized to do business in this state;

(5) A statement that the secretary of state is appointed
the agent of the foreign limited partnership for service of
process if no agent has been appointed under subdivision (4)
of this section or, if appointed, the agent’s authority has been
revoked or if the agent cannot be found or served with the
exercise of reasonable diligence;

(6) The address of the office required to be maintained
in the state of its organization by the laws of that state or,
if not so required, of the principal office of the foreign
limited partnership; and

(7) If the certificate of limited partnership filed in the
foreign limited partnership’s state of organization is not re-
quired to include the names and business addresses of the
partners, a list of such names and addresses.

§47-9-50. Issuance of registration; filing in the office of the clerk
of the county commission.

(a) If the secretary of state finds that an application for
registration conforms to law and all requisite fees have been
paid, he shall:

(1) Endorse on the application the word “filed”, and the
month, day and year of the filing thereof;
6 (2) File in his office a duplicate original of the application; and
7 (3) Issue a certificate of registration to transact business in this state.
8 (b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.
9 (c) The certificate of registration, or a duly certified copy thereof, shall be recorded in the office of the clerk of the county commission of the county where the principal office of the limited partnership in this state is located. If such limited partnership does not maintain a principal office in this state, the recordation may be completed in any county in which the limited partnership is conducting its affairs or doing or transacting business.

§47-9-51. Registration of name of foreign limited partnership.
1 A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

§47-9-52. Foreign limited partnership—Changes and amendments to registration.
1 If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement.

§47-9-53. Foreign limited partnership—Cancellation of registration.
1 A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does
not terminate the authority of the secretary of state to accept
service of process on the foreign limited partnership with re-
spect to claims for relief or causes of action arising out of the
transaction of business in this state.

§49-9-54. Foreign limited partnership—Transaction of business
without registration.

(a) A foreign limited partnership transacting business in
this state may not maintain any action, suit, or proceeding in
any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register
in the state does not impair the validity of any contract or act
of the foreign limited partnership or prevent the foreign limited
partnership from defending any action, suit, or proceeding in
any court of this state.

(c) A limited partner of a foreign limited partnership is not
liable as a general partner of the foreign limited partnership
solely by reason of having transacted business in this state
without registration.

(d) A foreign limited partnership, by transacting business
in the state without registration, appoints the secretary of
state as its agent for service of process with respect to claim
for relief or cause of action arising out of the transaction or
business in this state.

§47-9-55. Action by attorney general to restrain a foreign limited
partnership.

The attorney general may bring an action to restrain a
foreign limited partnership from transacting business in this
state in violation of this article.

§47-9-56. Right of action by limited partner.

A limited partner may bring an action in the right of a
limited partnership to recover a judgment in its favor if general
partners with authority to do so have refused to bring the
action or if an effort to cause those general partners to bring
the action is not likely to succeed.
§47-9-57. Proper plaintiff in derivative action.

1 In a derivative action, the plaintiff must be a partner at the
time of bringing the action and (1) at the time of the trans-
action of which he complains or (2) his status as a partner
had devolved upon him by operation of law or pursuant to the
terms of the partnership agreement from a person who was a
partner at the time of the transaction.

§47-9-58. Pleading in derivative action.

1 In a derivative action, the complaint shall set forth with
particularity the effort of the plaintiff to secure initiation of the
action by a general partner or the reasons for not making the
effort.

§49-9-59. Expenses in derivative action.

1 If a derivative action is successful in whole or in part or if
anything is received by the plaintiff as a result of a judgment,
compromise or settlement of an action or claim, the court may
award the plaintiff reasonable expenses, including reasonable
attorney's fees, and shall direct him to remit to the limited
partnership the remainder of those proceeds received by him.

§47-9-60. Construction and application of article.

1 This article shall be applied and construed to effectuate
its general purpose to make uniform the law with respect to
the subject of this article among states enacting the same.

§47-9-61. Short title of article.

1 This article may be cited as the "Uniform Limited Part-
nership Act."

§47-9-62. Effective date of article.

1 The provisions of this article become effective on the first
day of January, one thousand nine hundred eighty-two.

§47-9-63. Rules for cases not provided for in article.

1 In any case not provided for in this article, the provisions
of the uniform partnership act, article eight-a of this chapter,
shall apply.
AN ACT to amend and reenact section one, article two, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing admissions standards for veterans' homes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE HOMES FOR VETERANS.


In consultation with the governor and other appropriate state agencies, the department of veterans' affairs shall establish and maintain throughout the state a home or homes for qualified veterans. The present soldiers home at Weston state hospital shall be reidentified as veterans unit of Weston state hospital and continued as formerly constituted. As used in this article the term "qualified veteran" means a disabled veteran as determined by the department of veterans' affairs, who: (a) Is ambulatory and is able to attend to his personal needs, dress himself and attend a general mess; (b) served on active duty in the armed forces of the United States of America or a nation allied therewith during wartime; (c) is a resident of the state of West Virginia for one year or more prior to the filing for admission; and (d) who was discharged or separated with an honorable discharge or with a general discharge under honorable conditions.

In the event that the veteran served during peacetime and attained the age of sixty-five years, he shall be deemed a qualified veteran if he has met conditions (a), (c) and (d).

In the event that the veteran is under sixty-five years of age with a service incurred or aggravated disability and is eligible for hospital-domiciliary benefits administered by the
23 veterans' administration pursuant to the provisions of Title
24 38, United States Code, he shall be deemed a qualified
25 veteran if he has met conditions (a), (c) and (d).

CHAPTER 210
(H. B. 1673—By Mr. Whitlow and Mr. Frazier)

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

AN ACT to amend and reenact section three-a, article eight, chapter
five-a of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to authorizing certain volunteer
fire departments in the state to purchase certain obsolete,
unused, expendable, unneeded or otherwise surplus property of
the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.

§5A-8-3a. Disposition by director of surplus state property; semi-
annual report by director; application of proceeds from sale.

The director shall have the exclusive power and authority
to make disposition of commodities or expendable com-
modities now owned or in the future acquired by the state
when, in the opinion of the director, any such commodities
are or become obsolete or unusable or are not being used
or should be replaced.

The director shall determine what commodities or ex-
pendable commodities should be disposed of and he shall
make such disposition in the manner which in his opinion will
be most advantageous to the state, either by transferring the
particular commodities or expendable commodities between
departments, by selling such commodities to county commissions, county boards of education, municipalities or volunteer fire departments in this state when such volunteer fire departments have been held exempt from taxation under section 101 (6) of the United States Internal Revenue Code, by trading in such commodities as a part payment on the purchase of new commodities, or by sale thereof to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of such sale 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 wherein the sale is to be conducted. The sale may also be advertised in such other advertising media as the director may deem advisable. The director may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if in his opinion the best interest of the state will be served, reject all bids.

Upon the transfer of commodities or expendable commodities between departments, or upon the sale thereof to a county commission, county board of education, municipality or qualified volunteer fire department, the director shall set the price to be paid by the receiving department, county commission, county board of education, municipality or volunteer fire department, with due consideration given to current market prices.

The director may sell expendable, obsolete or unused motor vehicles owned by the state to county commissions, county boards of education or municipalities. In addition, the director may sell expendable, obsolete or unused motor vehicles owned by the state with a gross weight in excess of four thousand pounds to volunteer fire departments in this state when such volunteer fire departments have been held exempt from taxation under section 101 (6) of the United States Internal Revenue Code. The director, with due consideration given to current market prices, shall set the price to be paid by the receiving county commission, county board of education, municipality or qualified volunteer fire department for motor vehicles sold pursuant to this provision: Provided, That in no
event shall the sale price of any motor vehicle sold to a
county commission, county board of education, municipality
or qualified volunteer fire department be less than the
"average loan" value, as published in the most recent available
eastern edition of the National Automotive Dealer's Associa-
tion (N.A.D.A.) Official Used Car Guide, if such a value
is available. If no such value is available, the director shall
set the price to be paid by the receiving county commission,
county board of education, municipality or volunteer fire de-
partment with due consideration given to current market
prices.

The director shall report to the legislative auditor, semi-
annually, all sales of commodities or expendable commodities
made during the preceding six months to county commis-
sions, county boards of education, municipalities and qualified
volunteer fire departments. The report shall include a descrip-
tion of the commodities sold, the price paid by the commission,
board or governing body or fire department which received
the commodities; and the report shall show to whom each
commodity was sold.

The proceeds of such sales or transfers shall be deposited
in the state treasury to the credit on a pro rata basis of the
fund or funds out of which the purchase of the particular com-
modities or expendable commodities was made: Provided,
That the director may charge and assess fees reasonably
related to the costs of care and handling with respect to the
transfer, warehousing, sale and distribution of state property
disposed of or sold pursuant to the provisions of this section.

CHAPTER 211
(S. B. 308—By Mr. Colombo)

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

AN ACT to amend and reenact section two, article six, chapter
twenty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to child labor; and
permitting children ages sixteen through eighteen to work,
with certain limitations, for volunteer fire departments, if they have proper training and the written consent of their parents or guardians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CHILD LABOR.

§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.

No child under eighteen years of age shall be employed, permitted or suffered to work in any mine, quarry or tunnel; or in, about, or in connection with any of the following:

(1) Stone cutting or polishing;

(2) The manufacture or transportation of explosives or highly inflammable substances;

(3) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting or heat treatment of metals is carried on;

(4) Machinery used in the cold rolling of heavy metal stock, metal plate bending machines, or power-driven metal planing machines.

No child under eighteen years of age shall be employed or permitted to work in a public poolroom or billiard room, or be permitted, employed or suffered to sell, dispense or serve beer, in any place or establishment where beer is served, sold or dispensed, if dancing is permitted or allowed in the same room in which such beer is served, sold or dispensed, or in any indecent, obscene or immoral exhibition or practice.

The state commissioner of labor, the state director of health, and the state superintendent of free schools may, from time to time, after hearing duly had, determine whether or not any particular trade, process of manufacturing, or occupation in which the employment of children under eighteen years of age is not already forbidden by law, or any particular method
of carrying on such trade, process of manufacture, or occupation, is sufficiently dangerous to the lives or limbs, or injurious to the health or morals of children under eighteen years of age to justify their exclusion therefrom. There shall be a right of appeal to the supreme court of appeals from any such determination. No child under eighteen years of age shall be employed or permitted to work in any occupation thus determined to be dangerous or injurious to such children: Provided, That a child between the ages of sixteen and eighteen years who has completed the minimum training requirements of the West Virginia University fire service extension fire-fighter training section one, or its equivalent, and who has the written consent of his parents or guardian may be employed by or elected as a member of a volunteer fire department to perform fire-fighting functions without any such determination: Provided, however, That no such child may be permitted to operate any fire-fighting vehicles, enter a burning building in the course of his employment or work or enter into any area determined by the fire chief or fireman in charge at the scene of a fire or other emergency to be an area of danger exposing the child to physical harm by reason of impending collapse of a building or explosion, unless such child is under the immediate supervision of a fire line officer.

CHAPTER 212

(Com. Sub. for H. B. 1058—By Mr. Moore and Mr. Cook)

AN ACT to amend and reenact sections one, six and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections fourteen, fifteen and sixteen, all relating to providing definitions; requiring certain employers to post bond to secure the payment of wages and fringe benefits; empowering the state commissioner of labor to waive the bonding requirement:
giving employees a direct claim against the bond; providing for termination of the bond; providing notice to the commissioner; and prescribing certain violations and criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.
§21-5-6. Refusal to pay wages or redeem orders.
§21-5-15. Violations; criminal penalties.
§21-5-16. Contractors and subcontractors to notify commissioner.

§21-5-1. Definitions.

1 As used in this article:
2
3 (a) The term "firm" includes any partnership, association,
4 joint-stock company, trust, division of a corporation, the admin-
5 ministrator or executor of the estate of a deceased individual,
6 or the receiver, trustee, or successor of any of the same, or
7 officer thereof, employing any person.
8
9 (b) The term "employee" or "employees" includes any per-
10 son suffered or permitted to work by a person, firm or cor-
11 poration.
12
13 (c) The term "wages" means compensation for labor or
14 services rendered by an employee, whether the amount is
15 determined on a time, task, piece, commission or other basis
16 of calculation. As used in sections four, five, eight-a, ten
17 and twelve of this article, the term "wages" shall also include
18 then accrued fringe benefits capable of calculation and pay-
19 able directly to an employee: Provided, That nothing herein
20 contained shall require fringe benefits to be calculated con-
21 trary to any agreement between an employer and his em-
22 ployees which does not contradict the provisions of this article.
(d) The term "commissioner" means commissioner of labor or his designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks, provided that in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm, who knowingly permits the corporation or firm to violate the provisions of this article.

(i) The term "amount due" shall include at least all wages earned up to and including the fifth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which
is required by law, and includes regular vacation, graduated
vacation, floating vacation, holidays, sick leave, personal leave,
production incentive bonuses, sickness and accident benefits
and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm or
corporation employing any employee.

§21-5-6. Refusal to pay wages or redeem orders.

If any person, firm or corporation shall refuse for the period
of five days to settle with and pay any of its employees at
the intervals of time as provided in section three of this article,
or to provide fringe benefits after the same are due, or shall
neglect or refuse to redeem any cash orders provided for in
this article, within the time specified, if presented, and suit
be brought for the amount overdue and unpaid, judgment for
the amount of such claim proven to be due and unpaid, with
legal interest thereon until paid, shall be rendered in favor
of the plaintiff in such action; and, if the employee continues
to hold the cash order herein provided for, given for payment
of labor, in case of the insolvency of the person, firm or cor-
poration giving same, such employee shall not lose his lien
and preference under existing laws.


Whenever any person, firm or corporation shall contract
with another for the performance of any work which the prime
contracting person has undertaken to perform for another,
the prime contractor shall become civilly liable to employes
engaged in the performance of work under such contract for
the payment of wages and fringe benefits, exclusive of liqui-
dated damages as provided in subsection (e), section four of
this article, to the extent that the employer of such employee
fails to pay such wages and fringe benefits: Provided, That
such employees have exhausted all feasible remedies contained
in this article against such employer, but if the prime con-
tractor has failed to notify the commissioner as required by
section sixteen of this article, then the employee shall not be
required to exhaust any remedies against the employer:
Provided, however, That such employer shall become civilly
liable to such prime contractor for any sum of money paid by him under this section.


(a) With the exception of those who have been doing business in this state for at least five consecutive years, every person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of the employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond.

(b) The commissioner may waive the posting of any bond required by subsection (a) of this section upon his determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account or a combination of these methods. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States of America or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or
certificates of deposit in a bank in this state, which certificates
shall be in favor of the state. The cash deposit or market value
of such securities or certificates shall be equal to or greater than
the sum of the bond. The commissioner shall, upon receipt of
any such deposit of cash, securities or certificates, promptly
place the same with the state treasurer whose duty it shall be to
receive and hold the same in the name of the state in trust for
the purpose for which such deposit is made. The employer mak-
ing the deposit shall be entitled from time to time to receive
from the state treasurer, upon the written approval of the com-
missioner, the whole or any portion of any cash, securities or
certificates so deposited, upon depositing with him in lieu there-
of, cash or other securities or certificates of the classes herein
specified having value equal to or greater than the sum of the
bond.

(d) Notwithstanding any other provision in this article, any
employee, whose wages and fringe benefits are secured by the
bond, as specified in subsection (c) of this section, has a direct
cause of action against the bond for wages and fringe benefits
that are due and unpaid.

(e) Any employee having wages and fringe benefits unpaid,
may inform the commissioner of the claim for unpaid wages
and fringe benefits and request certification thereof. If the com-
missioner, upon notice to the employer and investigation finds
that such wages and fringe benefits or a portion thereof are un-
paid, he shall make demand of such employer for the payment
of such wages and fringe benefits. If payment for such wages
and fringe benefits is not forthcoming within the time specified
by the commissioner, not to exceed thirty days, the commissi-
er shall certify such claim or portion thereof, and forward the
certification to the bonding company or the state treasurer, who
shall provide payment to the affected employee within fourteen
days of receipt of such certification. The bonding company,
or any person, firm or corporation posting a bond, thereafter
shall have the right to proceed against a defaulting employer
for that part of the claim of the employee paid.

(f) With the exception of those exempt under subsection
(a) of this section, any employer who is engaged in construc-
tion work or the severance, production or transportation (ex-
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75 Ch. 212) including railroad and water transporters) of minerals shall post
76 one of the following in a place accessible to his or its em-
77 ployees: A copy of the bond provided under subsection (a)
78 of this section, or notification that the posting of a bond has
79 been waived by the commissioner.

80 (g) The bond may be terminated, with the approval of the
81 commissioner, after an employer submits a statement, under
82 oath or affirmation lawfully administered, to the commissioner
83 that the following has occurred: The employer has ceased
84 doing business and all wages and fringe benefits have been
85 paid, or the employer has been doing business in this state for
86 at least five consecutive years and has paid all wages and
87 fringe benefits. The bond may also be terminated upon a
determination by the commissioner that an employer is of
89 sufficient financial responsibility to pay wages and fringe
90 benefits.

§21-5-15. Violations; criminal penalties.

(a) Any person, firm or corporation who knowingly, will-
2 fully, and with intent to deprive employees of their wages and
3 fringe benefits fails to provide and maintain a bond as required
4 by section fourteen of this article is guilty of a misdemeanor,
5 and, upon conviction thereof, shall be fined not less than two
6 hundred dollars nor more than five thousand dollars, or im-
7 prisoned in the county jail not more than one month, or both
8 fined and imprisoned.

(b) Any person, firm or corporation who knowingly, will-
10 fully and fraudulently disposes of or relocates assets with in-
11 tent to deprive employees of their wages and fringe benefits
12 is guilty of a felony, and, upon conviction thereof, shall be
13 fined not less than five thousand dollars nor more than thirty
14 thousand dollars, or imprisoned in the penitentiary not less than
15 one nor more than three years, or both fined and imprisoned.

§21-5-16. Contractors and subcontractors to notify commissioner.

Whenever a person, firm or corporation contracts or sub-
2 contracts with an employer, which such contract or subcontract
3 contemplates the performance of construction work or the
4 severance, production or transportation (excluding railroads
or water transporters) of minerals, then the prime contractor or subcontractor shall notify the commissioner in writing by certified mail, return receipt requested, of such contract or subcontract as to the employer's name, the location of the job site and the employer's principal business location.

CHAPTER 213
(H. B. 1033—By Mr. Albright)
[Pas\[Passed March 6, 1981; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wage and maximum hours standards for employees generally and setting forth definitions with respect thereto; and excluding certain individuals employed by the Legislature of West Virginia within the definition of “employee.”

Be it enacted by the Legislature of West Virginia:

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

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

§21-5C-1. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the commissioner of labor or his duly authorized representatives.

4 (b) “Wage and hour director” means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

*Clerk's Note: This section was identically amended by S. B. 240 which passed April 11, 1981.
(c) "Wage" means compensation due an employee by reason of his employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoe-shine boys, golf caddies, pinboys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any
individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, partsman or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States department of transportation has statutory authority to establish qualifications and maximum hours of service; or (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the joint committee on government and finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the joint committee on government and finance designated by such joint committee.

(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive twenty-four hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked," in determining for the purposes of sections two and three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.
CHAPTER 214
(S. B. 240—By Mr. Heck)

[Passed April 11, 1981; in effect January 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage; and exempting certain legislative employees.

Be it enacted by the Legislature of West Virginia:

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

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

§21-5C-1. Definitions.


*§21-5C-1. Definitions.

1 As used in this article:
2 (a) "Commissioner" means the commissioner of labor or his duly authorized representatives.
3 (b) "Wage and hour director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.
4 (c) "Wage" means compensation due an employee by reason of his employment.
5 (d) "Employ" means to hire or permit to work.
6 (e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate,
Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pinchasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States
department of transportation has statutory authority to establish qualifications and maximum hours of service; or (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the joint committee on government and finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the joint committee on government and finance designated by such joint committee.

(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive twenty-four-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked," in determining for the purposes of sections two and-three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.


1 After the thirty-first day of December, one thousand nine hundred eighty-one, every employer shall pay to each of his employees wages at a rate not less than three dollars and five cents per hour.

* Clerk's Note: This section was identically amended by H. B. 1033 which passed March 6, 1981.

CHAPTER 215

(Com. Sub. for S. B. 121—By Mr. Shaw)

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

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article six, relating to social services for adults; authorizing the department of welfare to provide such services; providing definitions; establishing a comprehensive protective services system; providing for emergency services; providing for promulgation of rules and regulations allowing for payment of services to incapacitated persons as defined; termination or reduction of assistance; providing for remedies in circuit court; order of attachment for and commitment of incapacitated person; requiring appointment of guardian ad litem; prohibiting compelling of acceptance of services and discriminating against those who refuse to accept services; and providing for the confidentiality of records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

§9-6-2. Adult protective services; rules and regulations; organization and duties.

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

§9-6-4. Action to abate abuse, neglect or emergency.

§9-6-5. Emergency; immediate remedial treatment procedure.

§9-6-6. Payment and termination of payment for services to incapacitated adult.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

§9-6-8. Confidentiality of records.

§9-6-1. Definitions.

1 The following words and terms, when used in this article, shall have the same meaning hereafter ascribed to them unless the context clearly indicates a different meaning:

4 (1) “Adult protective services agency” shall mean any public or nonprofit private agency, corporation, board or organization furnishing protective services to adults;

7 (2) “Abuse” shall mean the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult;

10 (3) “Neglect” shall mean the (i) failure to provide the
necessities of life to an incapacitated adult with intent to
coerce or physically harm such incapacitated adult or (ii) the
unlawful expenditure or willful dissipation of the funds or
other assets owned or paid to or for the benefit of an
incapacitated adult;

(4) "Incapacitated adult" shall mean any person who by
reason of physical, mental or other infirmity is unable to
independently carry on the daily activities of life necessary to
sustaining life and reasonable health;

(5) "Emergency" or "emergency situation" shall mean a
situation or set of circumstances which presents a substantial
and immediate risk of death or serious permanent injury to an
incapacitated adult.

§9-6-2. Adult protective services; rules and regulations;
organization and duties.

There is hereby established and continued within the
department of welfare the system of adult protective services
heretofore existing. Within sixty days of the effective date of
this article, the commissioner shall prescribe the organization
and duties of and procedures which shall be used by the
department to effectuate the purposes of this article, which
regulations may be amended and supplemented from time to
time. The commissioner shall design and arrange such
regulations to attain, or move toward the attainment of the
following goals, to the extent that the commissioner believes
feasible under the provisions of this article within the state
appropriations and other funds available:

(1) Achieving or maintaining self-sufficiency and
self-support,

(2) Preventing, reducing and eliminating dependency on
the state,

(3) Preventing, reducing and eliminating neglect, abuse
and exploitation of adults who are unable to protect their own
interests,

(4) Preventing and reducing institutional care by
providing less intensive forms of care, preferably in the home,

(5) Referring and admitting adults to institutional care
only where other available services are inappropriate, and
(6) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings.

Such regulations shall provide for the means by which the department shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult protective services.

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

The department may cooperate with any adult protective services agency and may at any time establish or increase, and reduce or terminate any assistance granted to or through any adult protective services agency: Provided, That no reduction or termination shall be made unless the commissioner, in his discretion, first determines that such protective services agency unreasonably fails or refuses to use or apply such assistance in a manner which promotes the goals established under section two of this article: Provided, however, That assistance granted to a recipient client of the department shall not be withheld or reduced but shall instead be paid in whole or in part to some other protective services agency, which the commissioner finds will better serve the interests of the recipient client or to the person having actual custody of such recipient client.

In the case of a refusal to establish, maintain, increase, reduce or terminate any assistance to a protective services agency client or person having custody, such agency, client or person may within thirty days thereof demand a hearing on such failure which hearing shall be conducted in accord with the provisions of law relating to hearings upon a refusal of assistance by the department in any other case and shall include the right of appeal to an appropriate circuit court as in such cases of refusal of assistance.

§9-6-4. Action to abate abuse, neglect or emergency

The department or any reputable person may bring and maintain an action against any person having actual care, custody or control of an incapacitated adult, for injunctive relief, including a preliminary injunction, to restrain and abate any abuse or neglect of an incapacitated adult or to
abate an emergency situation. In any such proceeding the
court shall appoint a guardian ad litem, to protect the
interests of the incapacitated adult, who shall not be an
employee of the state nor be a party to the proceeding nor be
selected by or in the employ of any party to the proceeding:
Provided, That the court may by order terminate assistance
granted or paid to any person found to have abused or
neglected an incapacitated adult and order any such
assistance to be paid to another person solely for the use and
benefit of such abused or neglected person, and grant such
other equitable relief as may be appropriate in the
circumstances to restrain and abate such abuse or neglect:
Provided, however, That in the case of an action to abate an
emergency situation, the court may grant the relief
authorized in section five of this article.

§9-6-5. Emergency immediate remedial treatment; procedure.
Whenever a circuit court shall find in an action to abate an
emergency situation that there is probable cause to believe
that an incapacitated adult is in an emergency situation and
that the person or persons having the immediate care,
custody and control of such incapacitated adult refuses to
take necessary steps to alleviate such emergency or that such
incapacitated adult is without the actual care, custody and
control of any person, it may issue an order of attachment for
such incapacitated adult and direct that the peace officer
executing the same deliver such incapacitated adult in his
custody to a hospital or other safe place except a jail, for
immediate remedial treatment to reduce or avoid the risk of
death or serious permanent injury. Any peace officer and
such employees of the department the peace officer directs to
accompany him may enter into the place of abode to remove
such incapacitated person, notwithstanding the residence
therein of other persons.
If any employee or officer of the department shall by direct
observation of an incapacitated adult not in the immediate
care, custody or control of another have reasonable cause to
believe that such incapacitated person is then and there in an
emergency situation, then such officer or employee may offer
transportation to a hospital or other safe place, other than a
jail, to such incapacitated adult for immediate remedial
treatment to reduce or avoid the risk of death or serious
permanent injury.
Immediately upon delivery of any incapacitated person to such hospital or other safe place, such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem, who shall not be an employee of the state, nor be an interested party nor be selected by nor in the employ of any interested party, to represent the interests of such incapacitated adult, and the court shall fix a time, not later than one judicial day later, to determine if such remedial treatment shall continue or such incapacitated adult should be released. A copy of that attachment and notice of such hearing shall be served on any person in whose actual care, custody and control such incapacitated adult is found. If further remedial treatment is required, application shall be promptly made to the county commission or such other proper tribunal for appropriate relief: Provided, That the commitment for further remedial treatment may be continued until proceedings for such appropriate relief be concluded: Provided, however, That application for release from such remedial treatment may be made and granted at any time that the emergency ceases.

§9-6-6. Payment and termination of payment for services to incapacitated adult.

If any incapacitated adult (1) requires and is granted remedial treatment for an emergency or the department determines that an incapacitated adult is (2) abused, or (3) neglected, the department may pay any assistance granted for the use and benefit of such incapacitated adult to the person actually providing care for such adult, and terminate payments to any person alleged or shown to have abused or neglected such incapacitated adult, or to whom such payments were made prior to such remedial treatment, for so long as such remedial treatment continues, or until such abuse or neglect is abated, and such incapacitated adult continues to be in the immediate care, custody and control of such person.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

The department may develop a plan for a comprehensive
system of adult protective services including social case
work, medical and psychiatric services, home care, day care,
counseling, research and others.

It shall offer such services as are available and appropriate
in the circumstances to persons who, other than for
compensation, have or intend to have the actual, physical
custody and control of an incapacitated adult and to such
incapacitated adults or to adults who may request and be
entitled to such protective services: Provided, That except as
expressly provided in this article, the department may not
directly or indirectly compel the acceptance of such services
by any person or discriminate against a person who refuses
such services.

§9-6-8. Confidentiality of records.

All records of the department and all protective services
agencies concerning an adult under this article shall be kept
confidential and shall not be released: Provided, That such
records may be shared with other state agencies and
appropriate federal agencies where all such agencies limit the
use and distribution of information contained in such records
internally for the same purpose or purposes for which the
information was recorded: Provided, however, That such
information shall be released upon the written consent of the
adult or someone authorized to act on behalf of the adult:
Provided further, That a court may subpoena such records:
And provided further, That nonidentifying information may
be released for legitimate statistical purposes.
powers and duties of the unit; providing for investigations, subpoenas and confidentiality; relating to false statements or representations on applications; prohibiting bribery, false claims and conspiracy; providing criminal penalties; providing for civil remedies, triple damages and legal services; providing for Class A registration plates for vehicles of the unit; relating to other remedies and penalties and severability of the provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit.

§9-7-2. Definitions.

§9-7-3. Investigations; procedure.

§9-7-4. Applications for medical assistance; false statements or representations; criminal penalties.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties.

§9-7-6. Civil remedies.

§9-7-7. Licensing of vehicles for use by the medicaid fraud control unit.

§9-7-8. Remedies and penalties not exclusive.

§9-7-9. Severability.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit.

1 (a) It is the purpose of the Legislature to continue the medicaid fraud control unit previously established within the West Virginia department of welfare and to provide it with the responsibility and authority for investigating and controlling fraud and abuse of the medical programs of the state department of welfare which have been established pursuant to section two, article four of this chapter. It is the finding of the Legislature that substantial sums of money have been lost to the state and federal government in the operation of the medical programs of the state due to the overpayment of moneys to medical providers. Such overpayments have been the result of both the abuse of and fraud in the reimbursement process.

(b) The medicaid fraud control unit of the state department of welfare shall be continued and shall have the following powers and duties:
(1) The investigation and referral for prosecution of all violations of applicable state and federal laws pertaining to the provision of goods or services under the medical programs of the state including the medicaid program and the program known as handicapped children's services.

(2) The investigation of complaints alleging abuse or neglect of patients in health care facilities which receive payments under the medical programs of the state.

(3) To cooperate with the federal government in all programs designed to detect and deter fraud and abuse in the medical programs of the state.

(4) To employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and such other personnel as are deemed necessary from time to time to accomplish the purposes herein.

§9-7-2. Definitions.

For the purposes of this article:

(1) "Assistance" means money payments, medical care, transportation and other goods and services necessary for the health or welfare of individuals, including guidance, counseling and other welfare services and shall include all items of any nature contained within the definition of "welfare assistance" in section two, article one of this chapter.

(2) "Benefits" means money payments, goods, services, or any other thing of value.

(3) "Claim" means an application for payment for goods or services provided under the medical programs of the department of welfare.

(4) "Medicaid" means that assistance provided under a state plan implemented pursuant to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter has been and may hereafter be amended.

(5) "Provider" means any individual or entity furnishing goods or services under the medical programs of the department of welfare.
"Unit" means the medicaid fraud control unit established under section one of this article.

§9-7-3. Investigations; procedure.

(a) When the unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution under this article, the unit shall make an investigation to determine if the act has been committed and, to the extent necessary for such purpose, the commissioner, or an employee of the unit designated by the commissioner, shall have the power to administer oaths or affirmations, and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition and location of any book, record, documents or other tangible thing and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If documents necessary to an investigation of the unit shall appear to be located outside the state, such documents shall be made available by the person or entity within the jurisdiction of the state having control over such documents either at a convenient location within the state or, upon payment of reasonable and necessary expenses to the unit for transportation and inspection, at the place outside the state where such documents are maintained.

(c) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the unit may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The unit shall not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in such investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this article or any other provision of this code.
§9-7-4. Applications for medical assistance; false statements or representations; criminal penalties.

(a) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact in an application for medical assistance under the medical programs of the department of welfare.

(b) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact necessary to determine the rights of any other person to medical assistance under the medical programs of the department of welfare.

(c) A person shall not knowingly and intentionally conceal or fail to disclose any fact with the intent to obtain medical assistance under the medical programs of the department of welfare to which the person or any other person is not entitled.

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years, or shall be fined not to exceed ten thousand dollars or both fined and imprisoned as provided.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties.

(a) A person shall not solicit, offer or receive any remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to section two, article four of this chapter which expenditure is not authorized by applicable laws or rules and regulations governing said medical services fund.

(b) A person shall not make or present or cause to be made or presented to the department of welfare a claim under the medical programs of the department of welfare knowing the claim to be false, fraudulent or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent or fictitious
claim under the medical programs of the department of welfare.

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years or shall be fined not to exceed ten thousand dollars, or both fined and imprisoned as provided.

§9-7-6. Civil remedies.

(a) Any person, firm, corporation or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, devise or artifice on behalf of himself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the department of welfare to which he or it is not entitled, or, in a greater amount than that to which he or it is entitled, shall be liable to the department of welfare in an amount equal to three times the amount of such benefits, payments or allowances to which he or it is not entitled, and shall be liable for the payment of reasonable attorney fees and all other fees and costs of litigation.

(b) No criminal action or indictment need be brought against any person, firm, corporation or other entity as a condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted and maintained on behalf of the department of welfare by the attorney general and his assistants or a prosecuting attorney and his assistants or by any attorney in contract with or employed by the department of welfare to provide such representation.

§9-7-7. Licensing of vehicles for use by the medicaid fraud control unit.

For purposes of the responsibilities assigned the unit pursuant to this article, personnel of the unit shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates.

§9-7-8. Remedies and penalties not exclusive.

The remedies and penalties provided in this article
2 governing the operation of the medical programs of the
3 department of welfare are in addition to those remedies and
4 penalties provided elsewhere by law.

§9-7-9. Severability.

1 If any provision of this article be found by a court of
2 competent jurisdiction to be unenforceable under the
3 constitution of this state or the laws and constitution of the
4 United States, the remaining provisions of this article shall be
5 deemed severable and shall continue in full force and effect.

CHAPTER 217
(Com. Sub. for H. B. 1111—By Miss Shuman)

[Passed March 26, 1981; in effect ninety days from passage. Disapproved by the
Governor, and repassed notwithstanding his objections.] AN ACT to amend and reenact section seven, article thirteen, chapter
eight of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to amend section four, article one;
sections one and nine-d, article three; section twenty-two, article
four; section thirteen, article six; and section eleven, article
seven, all of chapter sixty of said code; and to further amend
said chapter sixty by adding thereto a new article, designated
article eight, all relating to the retail sale of wine to the public
by private licensees; providing the definition of certain terms
used with respect thereto; requiring the licensure of certain per­
sons selling to the alcohol beverage control commissioner or to
certain distributors and the eligibility of certain persons for
licensure; the fees applicable to such licensure; suspension or re­
vocation of such license; prohibiting certain acts for such licens­
ed persons and providing penalties therefor; prohibiting cer­
tain state, county and municipal officials and certain relatives of
such persons from being so licensed; providing for certain re­
strictions upon the importation of alcoholic liquors including
wines into this state and providing exceptions therefor; permit­
ting the sale by wine distributors to licensed private clubs; pro­
viding for rules of construction and application of provisions of
said article eight; requiring license for distributor and retailer; establishing fees for such licenses; providing restrictions upon eligibility for licenses; levying and imposing a gallonage tax; imposing or authorizing a tax for the benefit of counties and municipalities; requiring reports of sales and return of tax; providing for refund or credit of taxes; imposing restrictions, registration and reporting requirements on persons selling or shipping wine into this state and providing a penalty for violation by such persons; requiring preservation of records and authorizing the alcohol beverage control commissioner to inspect and examine records and persons; providing for assessments of tax; jeopardy assessments; interest; providing penalties for insufficient and fraudulent returns or failure to file; providing for notices, hearings and appeals on assessments; authorizing commissioner to collect taxes by distraint, action or suit; providing for creation of lien against taxpayer's property; requiring registration of label and establishing registration fee; regulating relationships between licensees; prohibiting discrimination by distributors; prohibiting distributors from selling wine on credit; prescribing unlawful acts generally; prescribing criminal penalties for violations of article and for making false statements; requiring application for license; prescribing contents and requiring verification of application; requiring bond of distributor; prescribing procedure upon submission of application; prohibiting transfer of license; duties and powers of commissioner; promulgation of rules and regulations; subpoena power; procedure on revocation or suspension of license; hearing; review; providing for forfeiture of bond of distributor; providing for disposition of fees and taxes collected by commissioner; and making local option election provisions of article five, chapter sixty of this code applicable to the sale of wine by licensees hereunder; prohibiting exclusive franchise areas to be established by distributors; providing certain limitations to whom resident manufacturers of wine may sell their product and providing certain exceptions therefor; providing that all wines sold at retail must be in sealed packages or bottles and must bear such seals and labels as may be required by the commissioner; providing certain criminal penalties for the violation of the provisions of the article; granting authority to the commissioner and other persons to seek the abatement of certain public nuisances with re-
spect to the sale of wine; and providing for certain unlawful acts on the premises of a wine retailer.

Be it enacted by the Legislature of West Virginia:

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

Chapter


60. State Control of Alcoholic Liquors.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 Every municipality shall have plenary power and authority to levy and collect a tax upon all purchases within such municipality of intoxicating liquors from the alcohol beverage control commissioner or from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code: Provided, That no municipality shall have authority to levy or collect any such tax on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven, chapter sixty of this code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase.

2 The tax shall not exceed three percent of the purchase price.

3 A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to the West Virginia alcohol beverage control commissioner and to the tax commissioner. The West Virginia alcohol beverage control commissioner by appropriate rules and regulations

*Clerk's Note: This section was also amended by H. B. 1331, now Chapter 163, which was passed on April 10, 1981.
shall provide for the collection of such tax upon all purchases
within such municipality of intoxicating liquors from the alcohol
beverage control commissioner or from any person licensed to
sell wine at retail pursuant to the provisions of chapter sixty
of this code and for distribution thereof to the respective
municipalities for which the same shall be collected. Such
rules and regulations shall provide that all such taxes shall
be deposited with the state treasurer and distributed quarterly
by the treasurer upon warrants of the auditor payable to the
municipality.

Every municipality shall have plenary power and authority
to levy and collect a fee from any private club licensee whose
premises are situate therein, as authorized in section seven,
article seven, chapter sixty of this code.

CHAPTER 60.
STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3. Sales by Commissioner.
4. Licenses.
7. Licenses to Private Clubs.
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-4. Sales to be made by or through West Virginia alcohol
beverage control commissioner.

Alcoholic liquors shall be sold at wholesale and retail in
this state only by or through the West Virginia alcohol bever-
age control commissioner or retail agencies established by
him or any predecessor commissioners or commission, except
as authorized by articles seven and eight of this chapter.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-1. Sales at retail and wholesale.
§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits
of municipalities; limitation; rate of tax; collection and distri-
bution.

*§60-3-1. Sales at retail and wholesale.

The sale of alcoholic liquors at wholesale and retail in

*Clerk's Note: Section 60-3-1 was also amended by H. B. 935, now Chapter 218, which
was passed on March 5, 1981.
this state is a state monopoly, except for sales made by
authority of articles seven and eight of this chapter.

**§60-3-9d. Tax on purchases of intoxicating liquors outside cor-
porate limits of municipalities; limitation; rate of
tax; collection and distribution.

For the purpose of providing financial assistance to and
for the use and benefit of the various counties and municipal-
ities of this state, there is hereby levied a tax upon all purchases
outside the corporate limits of any municipality of intoxicating
liquor from state stores or other agencies of the alcohol bever-
age control commissioner and of wine from any person licensed
to sell wine at retail under the provisions of article eight,
chapter sixty of this code. The tax shall be three percent of
the purchase price and shall be added to and collected with
the purchase price by the commissioner or by the person so
licensed to sell wine: Provided, That no such tax shall be
collected on the intoxicating liquors sold by or purchased
from holders of a license issued under the provisions of article
seven of this chapter.

All such tax collected within one mile of the corporate
limits of any municipality within the state shall be remitted
to such municipality; all other tax so collected shall be
remitted to the county wherein collected: Provided, That
where the corporate limits of more than one municipality be
within one mile of the place of collection of such tax, all
such tax collected shall be divided equally among each of
said municipalities: Provided, however, That such mile is
measured by the most direct hard surface road or access way
usually and customarily used as ingress and egress to the
place of tax collection.

The West Virginia alcohol beverage control commissioner
by appropriate rules and regulations shall provide for the
collection of such tax upon all purchases outside the corporate
limits of any municipality of intoxicating liquor from state
stores or other agencies of the alcohol beverage control

**Clerk's Note:** Section 60-3-9d was also amended by H. B. 935, now Chapter 218, which was passed on March 5, 1981 and by H. B. 1331, now Chapter 163, which was passed on April 10, 1981.
commissioner, separation or proration of the same and dis-
32 tribution thereof to the respective counties and municipalities
33 for which the same shall be collected. The tax commissioner
34 by appropriate rules and regulations shall provide for the
35 collection of such tax upon all purchases outside the corporate
36 limits of any municipality of wine from any person licensed to
37 sell wine at retail under the provisions of article eight,
38 chapter sixty of this code, separation or proration of the
39 same and distribution thereof to the respective counties and
40 municipalities for which the same shall be collected. Such
41 rules and regulations shall provide that all such taxes shall
42 be deposited with the state treasurer and distributed quarterly
43 by the treasurer upon warrants of the auditor payable to the:
44 counties and municipalities.

ARTICLE 4. LICENSES.

§60-4-22. Wholesale representatives' licenses.

No person, firm or corporation shall be or act or serve as
1 an agent, broker or salesman selling or offering to sell or solic-
2 iting or negotiating the sale of alcoholic liquor to the com-
3 mission or to any distributor licensed pursuant to article eight
4 of this chapter without first obtaining a license so to do in
5 accordance with the provisions of this section. Only salaried
6 employees of distilleries, manufacturers, producers or pro-
7 cessors of alcoholic liquor may be licensed hereunder, and no
8 person may be licensed hereunder who sells or offers to sell
9 alcoholic liquor to the commission or any distributor on a fee
10 or commission basis. The commission shall be the licensing
11 authority and may grant to persons of good moral character
12 the license herein provided, and may refuse to grant such
13 license to any person heretofore convicted of a felony within
14 ten years prior to his application for such license; refuse to
15 grant, suspend or revoke licenses. Licenses shall be on an an-
16 nual basis for the period from the first day of July until the
17 thirtieth day of June next following. New and renewal licenses
18 shall be granted only upon verified application to the commis-
19 sion presented on forms provided by the commission. Any per-
20 son representing more than one producer, manufacturer, or
21 distributor of alcoholic liquors shall file a separate application
22 and shall obtain a separate license for each such representa-
tion. The annual license fee shall be one hundred dollars. The fee for any license granted for the remainder of any license year between the first day of January and the thirtieth day of June of the same calendar year shall be fifty dollars.

No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license hereunder. No member of the Legislature or the spouse of any such member may be granted a license hereunder. Nor shall any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license hereunder.

In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his name and his residence address and the name and business address of the producer, manufacturer or distributor he represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he represents; the monetary total of all alcoholic liquor sales, if any, made by him to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he is seeking a license; the monetary total of the gross income received by him on such sales, if any, during such fiscal year; whether he has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official.

All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection.
at the commission's offices at the state capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his license shall be canceled and terminated.

Except as to owners, principal officers or employees of farm wineries, all persons licensed hereunder shall be full-time salaried employees of the distilleries, manufacturers, producers or processors of alcoholic liquor they represent and shall devote their full time to the duties of such employment and shall have and engage in no other remunerative occupation or calling at the same time. No such licensed person shall share, divide or split his salary with any person other than his wife, or some legal dependent, nor shall he make any contribution to any political party campaign fund in this state.

All licensees hereunder shall be subject to all other provisions of this chapter and to the lawful rules and regulations promulgated by the commission. Licenses may be refused, suspended or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license, shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding one thousand dollars or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-13. Restrictions on importing into, and transporting liquors in state.

Except as permitted by section six of this article and article eight of this chapter, a person shall not import into, or transport in this state, any alcoholic liquors, unless it is:
(1) Consigned to the commission;

(2) Transported upon the direction of the commission directly to persons licensed to receive alcoholic liquors at wholesale; or

(3) Transported into the state or through the state to persons outside the state upon transportation permits issued by the commissioner.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner; exceptions.

All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by such commissioner for sales of such alcoholic liquors to the public generally except that such licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices such distributors sell such wines to retailers licensed pursuant to said article.

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

PART II. SALE OF WINE GENERALLY.
§60-8-17. License issuance or refusal; terms of license.
§60-8-18. Revocation or suspension of license; procedure upon refusal, revocation or suspension.
§60-8-19. To whom licensed resident manufacturer may sell.
§60-8-20. Unlawful act generally.
§60-8-21. Sale in sealed, labeled packages required.
§60-8-22. Sales on credit prohibited; exception.
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§60-8-24. Disposition of revenue.
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PART III. WINE DISTRIBUTION.

§60-8-28. Registration of labels.
§60-8-29. Bond required of distributors.
§60-8-30. Exclusive franchise agreements prohibited.
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PART IV. WINE RETAILERS.

§60-8-32. Where wine may be sold at retail.
§60-8-33. Certain prohibitions not applicable.
§60-8-34. When retail sales prohibited.
§60-8-35. Other unlawful acts.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

(a) The provisions of part II of this article shall have general application to the distribution and retail sale of wine in this state. The provisions of part III of this article shall relate solely to the distribution and the regulation of distributors of such wines as may be permitted to be sold at retail pursuant to the provisions of this article. The provisions of part IV of this article shall relate solely to the retail sale of wine in grocery stores as the term "grocery store" is defined in this article and the retail sale of wine in wine specialty shops as defined in this article. In the event of any inconsistency of any provisions of part II and the provisions of either part III or part IV of this article, the provisions of either part III or part IV shall prevail to the extent of such inconsistency.

(b) In the event of any inconsistency between any of the provisions of this article and provisions of any other article
of this chapter or of this code, the provisions of this article shall prevail to the extent of any such inconsistency.

(c) To the extent the provisions of this chapter exclusive of this article may be given application without creating an inconsistency with the provisions of this article, the provisions of this chapter, exclusive of this article, shall apply to the same extent as if this article did not exist.

**PART II. SALE OF WINE GENERALLY.**

§60-8-2. Definitions.

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

"Commissioner" means the West Virginia alcohol beverage control commissioner.

"Distributor" means any person whose principal place of business is within the state of West Virginia, and who is engaged in selling or distributing wine to retailers under authority of this article and actually maintains a warehouse in this state for the distribution of wine.

"Fortified wine" shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket or delicatessen, where food, food products and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wines) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars. The term "grocery store" shall also include and mean a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales with respect to such separate or segregated portion (exclusive of sales of wine) of not less than three thousand dollars and an average monthly inventory (exclusive of inventory of wine) of not less than three thousand dollars.
“Licensee” means the holder of a license granted under the provisions of this article.

“Retailer” means any person licensed to sell wine at retail to the public at his established place of business for off-premises consumption and who is licensed to do so under authority of this article.

“Tax” includes within its meaning interest, additions to tax and penalties.

“Taxpayer” means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article and any person claiming a refund of tax.

“Varietal wine” means any wine labeled according to the grape variety from which such wine is made.

“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce such wine or harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine.

“Wine specialty shop” means a retailer who shall deal principally in the sale of table wine, wine accessories and food or foodstuffs normally associated with wine and who shall maintain a representative number of such wines for sale in his inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and such inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count.

§60-8-3. Licenses; fees; general restrictions.

Except as to farm wineries as defined by section five-a, article one of this chapter, no person may engage in business in the capacity of a distributor or retailer without first obtaining a license from the commissioner, nor shall a person con-
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5 continue to engage in any such activity after his license has ex-
6 pired, been suspended or revoked. No person may be licensed
7 in more than one of such capacities at the same time.

8 The commissioner shall collect an annual fee for licenses is-
9 sued under this article as follows:

10 (a) Twenty-five hundred dollars per year for a distributor’s
11 license.

12 (b) One hundred fifty dollars per year for a retailer’s license.

13 The license period shall begin on the first day of July of
14 each year and end on the thirtieth day of June of the follow-
15 ing year, and if the initial license is granted for less than a year,
16 the fee shall be computed in proportion to the number of
17 quarters remaining in the fiscal year, including the quarter in
18 which application is made.

19 No retailer may be licensed as a private club as provided by
20 article seven of this chapter or as a Class A retail dealer in
21 nonintoxicating beer as provided by article sixteen, chapter
22 eleven of this code. A retailer who has more than one place of
23 retail business shall obtain a license for each separate retail
24 establishment. A retailer’s license may be issued only to the
25 proprietor or owner of a bona fide grocery store or wine
26 specialty shop.

§60-8-4. Gallonage tax.

1 There is hereby levied and imposed on all wine sold by dis-
2 tributors to retailers a tax of one dollar per gallon and
3 in like ratio on other volumes. No wine imported, sold or
4 distributed in this state shall be subject to more than one
5 gallonage tax.

6 The retailer shall pay to the distributor the amount of tax
imposed by this article which shall be added to and constitute
7 part of the sales price, and shall be collectible as such by the
8 distributor. Before the sixteenth day of each month during the
9 license period, every distributor shall make a written report,
10 under oath, to the commissioner showing the quantity, label
11 and alcoholic content of wine sold or purchased by the distribu-
12 tor during the preceding month, and at the same time shall
pay the tax thereon imposed by this article on the wine sold during the preceding month. The report shall contain other information and be in the form the commissioner may require. For purposes of this article, the reports required by this section shall be considered tax returns.

§60-8-5. Refund or credit of taxes.

The commissioner shall refund, or credit on a subsequent return, any tax which has been erroneously or illegally collected. In the event that a licensee, while the owner of wine on which the tax imposed by this article has been paid, loses such wine through fire or casualty, other than breakage occurring on the premises of the licensee because such wine has been declared by the commissioner to be unfit for sale, and the amount of tax paid exceeds fifty dollars, the commissioner shall refund the tax paid. The commissioner shall promulgate regulations establishing the procedure and nature of proof required in case of any claim for refund or credit.

§60-8-6. License or registration required for sale or shipment of wine.

Except as to the commissioner, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. Before the sixteenth day of each month, every such person shall make a written report, under oath, to the commissioner showing all sales, shipments and deliveries of wine made to distributors during the preceding month. The report shall state the identity of the purchaser, the quantity, label and alcoholic content of the wine, and shall be in the form and contain other information the commissioner may require. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has...
violated the provisions of this article. During such one-year period, it shall be unlawful for any distributor within this state to buy or receive wine from such person or to have any dealings with such person with respect thereto. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses under this article.

§60-8-7. Records; inspection.

Every person who sells or ships wine to a distributor, and every distributor, shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading and other pertinent papers required by the commissioner. All such records shall be preserved for at least two years. The commissioner may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor. The commissioner may require the production, within this state at the time and place he may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof, in order that an examination thereof may be made by the commissioner or his duly designated agents.

§60-8-8. Assessment of tax when insufficiently returned.

If the commissioner believes that the tax imposed by this article is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous or a person has filed and has been paid upon an erroneous claim, petition, or application for a refund of taxes, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.


If the commissioner believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall be
immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment is final. A petition for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by security the commissioner deems necessary to ensure compliance with this article.

§60-8-10. Interest; penalties.

(1) Interest.—The tax imposed by this article, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return. Each assessment or deficiency notice made by the commissioner shall bear interest at the rate of six percent per annum. In all cases of delinquency or extensions of time, interest shall be assessed and collected.

(2) Additions to tax; penalty.—In the case of any failure to make or file a return or whenever the full amount of the tax on any portion or deficiency thereof has not been paid, as required by this article, unless it be shown that such failure is due to reasonable cause and not due to willful neglect, there may be added to the tax five percent if a failure is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which failure shall continue, not to exceed twenty-five percent in the aggregate. If no tax is due, the penalty shall be twenty-five dollars per month or fraction thereof for failure to file a tax return.

(3) Fraudulent returns; willful failure to file.—In the case of the filing of any false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a willful failure to file a return with intent to evade the tax, or the filing of a false claim for credit or refund, there shall be added to the tax due a penalty in an amount equal to one hundred percent of the tax due. The burden of proving fraud, willfulness, or intent to evade tax shall be upon the commissioner.
§60-8-11. Notice of assessment; petition for reassessment.

The commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (twenty days in the case of jeopardy assessments), either personally or by certified mail, file with the commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for objections, said assessment shall become final and conclusive, not subject to administrative or judicial review, and the amount thereof shall be payable at the end of the thirty day period (twenty days in the case of a jeopardy assessment).

A petition for reassessment shall be deemed to be timely filed if the postmark date thereon is clearly within said thirty days (twenty days in case of a jeopardy assessment) of receipt of said assessment by the taxpayer or is received within such period.

§60-8-12. Hearings; appeals.

In every case when a petition for reassessment is filed, the commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof. Such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the commissioner. At such hearing, the assessment shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the taxpayer assessed to show that the assessment is incorrect and contrary to law.

In every case where a petition or request for refund as above described is filed and the commissioner has refused to allow said refund in whole or in part, the petitioner may file within thirty days after receipt of the commissioner’s decision a written request for hearing. In every case where a request for hearing is filed, the commissioner shall proceed to assign and hold such hearing in accordance with the methods herein...
prescribed for a petition for reassessment. After any such hearing, the commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is made within thirty days from service of this notice, the commissioner’s decision shall be final.

Every assessment made by the commissioner under this article which becomes final shall constitute a judgment and may be collected as judgments are collected.

An appeal may be made by the taxpayer to the circuit court of the county in which he conducts the taxed activity, or in which he resides, or in the circuit court of Kanawha County, within thirty days after he has received notice from the commissioner of his determination as provided in this section.

The appeal shall be made by written notice to the commissioner and served as an original notice. When the notice is served it shall, with the return thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the commissioner as defendant. Before the appeal is heard, the plaintiff shall file with the clerk a bond for the use of the defendant, with sureties approved by the clerk, the penalty of the bond to be not less than the total amount of the tax, interest, additions to tax and penalties appealed from, and conditioned that the plaintiff shall perform the orders of the court.

The court shall hear the appeal upon the administrative record below and determine anew all questions submitted to it on appeal from the determination of the commissioner. In such appeal, a certified copy of the commissioner's assessment is admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of the decree shall be filed by the clerk of said court with the commissioner who shall then correct the assessment in accordance with said decree. An appeal may be made by the taxpayer or the commissioner to the supreme court of appeals of this state.

§60-8-13. Sale or discontinuance of business of taxpayer.

Whenever any person liable for the tax imposed by this
article ceases business at any location by reason of sale or
discontinuance, the taxes imposed by this article are due and
payable immediately and such person shall make a final re-
turn within fifteen days after the date of sale or discontinuance.
Such taxes shall be a lien upon the property of such person.

§60-8-14. Collection by distraint; report of collection.
The commissioner may distrain upon any goods, chattels
or intangibles represented by negotiable evidences of indebt-
edness of any taxpayer delinquent under this article for the
amount of all taxes accrued and unpaid hereunder. The com-
missioner may require the assistance of the sheriff of any
county of the state in levying such distress in the county of
which such sheriff is an officer. A sheriff collecting taxes due
hereunder is entitled to compensation in the amount of all
additions to tax collected exceeding the principal amount of
the tax due, but in no case may such compensation exceed
twenty-five dollars. All taxes collected shall be reported and
returned within ten days after collection to the commissioner,
who shall pay the sheriff the compensation due him under
this section.

The sheriff shall within five days after receipt of the distress
warrant file with the clerk of the county commission a copy
thereof and thereupon the clerk shall enter in the judgment
docket the name of the taxpayer mentioned in the warrant and
the amount of the tax for which the warrant is issued and the
date when such copy is filed, and thereupon the amount so
docketed shall become a lien upon the title to an interest in
real property or chattels real of the person against whom it is
issued, in the same manner as a judgment duly docketed in
the office of such clerk. The sheriff shall then proceed upon
the warrant in the same manner prescribed by law in respect
to executions issued against property upon judgment of a court
of record. If a warrant is returned not satisfied in full, the
commissioner has the same remedies to enforce the claim for
the taxes against the taxpayer as if the state had recovered
judgment against the taxpayer for the amount of the tax.

§60-8-15. Collection by action or suit.
The commissioner may collect any tax due and unpaid under
the provisions of this article by appropriate legal proceedings
in the county where the activity taxed was conducted or the
taxpayer resides, or by a suit to enforce the lien therefor in any
county where property of the taxpayer is located.

§60-8-16. Application for license.

Any person desiring a license under this article shall file a
written application for a license with the commissioner, and
in the application shall state under oath:

(1) The name of the applicant, including his trade name
if any, his address and the length of his residence within this
state;

(2) The address of the place of business for which the
license is desired, or other description that definitely locates
it; and that the place of business conforms to all health and
fire laws and regulations applicable thereto;

(3) The name of the owner of the premises upon which the
business is to be conducted, and, if the owner is not the appli-
cant, that such applicant is the bona fide lessee of the business;

(4) If the application is for a retailers license, that the appli-
cant is the proprietor or owner of a bona fide grocery store or
wine specialty shop;

(5) That the applicant intends to carry on the business
authorized by the license for himself or under his immediate
supervision or direction;

(6) That the applicant is a citizen of the United States and
an actual bona fide resident of the state of West Virginia and
is not less than eighteen years of age;

(7) That the applicant has not been convicted of a felony
or other crime involving moral turpitude within the three years
next preceding the filing of the application; and that he has
not, within the two years next preceding the filing of the
application, been convicted of violating the liquor laws of any
state or of the United States;

(8) That the applicant has not during the five years next
preceding the date of said application had any license revoked
under this chapter or under the liquor laws of any other state;

(9) If the applicant is a firm, association or partnership,
the application shall state the matters required in subdivisions
(6), (7) and (8), with respect to each of the members thereof,
and each of said members must meet all the requirements in
said subdivisions;

(10) If the applicant is a corporation, organized or autho-
ized to do business in this state, the application shall state the
matters required in subdivisions (6), (7) and (8), with respect
to each of the officers and directors thereof, and any stock-
holder owning twenty percent or more of the stock of such
corporation, and the persons who conduct and manage the
licensed premises for the corporation. Each of said individuals
must meet all the requirements provided in those subdivisions
except that the requirements as to citizenship and residence
shall not apply to the officers, directors and stockholders of a
corporation applying for a retailers license; and

(11) Any other information that the commissioner may
reasonably require.

The foregoing statements required in an application shall
constitute mandatory prerequisites for the issuance of a license.

The application must be verified by the owner, or each
member of the firm, each partner, if a partnership, each mem-
ber of the governing board, if an association, or each officer
and director, if a corporation: Provided, That the application
of a corporation applying for a retailers license need be veri-
fied only by its president or vice president.

§60-8-17. License issuance or refusal; terms of license.

(a) Upon receipt of the application, fee, and bond if requir-
ed, the commissioner shall conduct such investigation as he
may deem necessary to determine the accuracy of the matters
contained in the application. For the purposes of conducting
such investigation, the commissioner may withhold the grant-
ing or refusal to grant a license for a period not to exceed
thirty days. If it appears that there is no false statement con-
tained in the application and that the issuance of the license
would not be in conflict with any of the provisions of this
chapter, the commissioner shall issue the license, and other-
wise shall refuse to issue such license.

(b) The commissioner shall refuse the license of any appli-
cant if he finds that such applicant is not a suitable person
or that the place of business of such applicant is not a suitable
place or that such applicant has not complied with the pro-
visions of this chapter. Upon refusal to issue such license,
the commissioner shall enter an order refusing such applica-
tion, which refusal is final unless a hearing is requested in
accordance with the provisions of section eighteen of this
article. When such refusal becomes final the commissioner
shall forthwith refund to the applicant his fees and bond ac-
companying said application.

(c) Such license shall expire on the thirtieth day of June
next following the date it was issued and may be renewed up-
on the same showing as required for the issuance of the initial
license, together with the payment of fee and filing of any bond
required by this article.

(d) Such license shall not be transferred to another person,
but the location of the premises to which the license relates
may be changed with the written consent of the commissioner
if the new location is such as would satisfy the requirements
of this article upon an initial application.

§60-8-18. Revocation or suspension of license; procedure upon re-
fusal, revocation or suspension.

(a) The commissioner may on his own motion, or shall on
the sworn complaint of any person, conduct an investigation
to determine if any provisions of this article have been
violated by any licensee. The commissioner may suspend or
revoke any licensee's license if he finds that such licensee
has violated any provision of this article, or if he finds the
existence of any ground on which a license could have been
refused, if such licensee were then applying for a license,
and if the commissioner finds that a licensee has willfully
violated any provision of this article he shall revoke such
licensee's license.
(b) Whenever any distributor fails or refuses to keep the bond required by section twenty of this article in effect, such distributor's license shall be automatically suspended until such time as bond required by section twenty is furnished to the commissioner, at which time such suspension shall be vacated.

(c) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, he shall enter an order to that effect, and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(d) Any applicant or licensee, as the case may be, adversely affected by such order shall have a right to a hearing thereon before the commissioner, providing that demand in writing for such hearing is served upon the commissioner within ten days following the receipt by such applicant or licensee of the copy of said order. The service of such demand for a hearing upon the commissioner shall operate to suspend the execution of the order with respect to which a hearing is being demanded, except an order suspending a license under the provisions of subsection (b) of this section. The person demanding a hearing shall give security for the cost of such hearing in such form and amount as the commissioner may reasonably require. If the person demanding such hearing does not substantially prevail in such hearing or upon judicial review thereof as hereinafter provided, then the costs of such hearing shall be assessed against him by the commissioner and may be collected by an action at law or other proper remedy.

(e) The commissioner shall immediately set a date for such hearing and notify the person demanding such hearing thereof, which hearing shall be held within thirty days after receipt of said demand. At such hearing the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying or vacating the order, which order shall be final unless vacated or modified upon judicial review thereof.

(f) Such hearing and the administrative procedure prior to, during and following the hearing shall be governed by
and in accordance with the provisions of article five, chapter
twenty-nine-a of this code in like manner as if the provisions
of article five were set forth in extenso in this section.

(g) Any person adversely affected by an order entered
following such hearing shall have the right of judicial review
thereof in accordance with the provisions of section four,
article five, chapter twenty-nine-a of this code with like
effect as if the provisions of said section four were set forth
in extenso herein.

(h) The judgment of a circuit court reviewing the order
of the commissioner shall be final unless reversed, vacated
or modified on appeal to the supreme court of appeals in ac-
cordance with the provisions of section one, article six,
chapter twenty-nine-a of this code.

(i) Legal counsel and services for the commiss10r in all
such proceedings in any circuit court and the supreme court
of appeals shall be provided by the attorney general or his
assistants and in any proceedings in any circuit court by the
prosecuting attorney of that county as well, all without addi-
tional compensation.

§60-8-19. To whom licensed resident manufacturer may sell.

A person who is licensed to manufacture in this state wine
as defined in this article may sell such wines in this state
only to the West Virginia alcohol beverage control com-
missioner and to distributors as defined in this article. Such
manufacturers may sell such wine outside of this state for
use or resale outside this state. The provisions of this section
shall not apply to farm wineries as defined by section five-a,
article one of this chapter.

§60-8-20. Unlawful act generally.

It shall be unlawful:

(a) For a distributor to sell or deliver wine purchased or
acquired from any source other than a person registered under
the provisions of section six, article eight, chapter sixty of
this code, or for a retailer to sell or deliver wine purchased
or acquired from any source other than a licensed distributor
or a farm winery as defined in section five-a, article one of this chapter;

(b) For a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

c) For a licensee, his servants, agents or employees to sell, furnish or give wine to any minor, mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;

d) For a licensee to permit any person to whom alcoholic liquors cannot be sold under the provisions of section twenty-two, article three, chapter sixty of this code, to sell, furnish or give wine to any person; or

e) For a person to violate any reasonable rule or regulation promulgated by the commissioner under this article.

§60-8-21. Sale in sealed, labeled packages required.

All wines sold pursuant to this article, except that sold pursuant to the provisions by article seven of this chapter, shall be sold only in sealed packages, bearing such seals and labels as the commissioner may require. A manufacturer of wine offered for sale by any licensee shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commissioner may require.

§60-8-22. Sales on credit prohibited; exception.

It shall be unlawful for a distributor to sell or offer to sell, or a retailer to purchase or receive, any wine except on a cash basis, and no right of action exists to collect any claims for credit extended contrary to the provisions of this subdivision: Provided, That nothing herein prohibits, as a credit on any subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders, and other such reasons customary in the trade.

§60-8-23. Duties and powers of commissioner; rules and regulations.

The commissioner is hereby authorized:
(a) To enforce the provisions of this article.

(b) To enter the premises of any licensee at reasonable times for the purpose of inspecting the premises, and determining the compliance of the licensee with the provisions of this article and any rules and regulations promulgated by the commissioner.

(c) In addition to rules and regulations relating to the tax imposed by section four of this article, to promulgate reasonable rules and regulations as he deems necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to:

(1) The transport, use, handling, service and sale of wine;

(2) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption.

(d) To issue subpoenas and subpoenas duces tecum for the purposes of conducting hearings under the provisions of section twelve of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if said section one was set forth in extenso in this subdivision.

The authority granted in subdivisions (a), (b) and (d) of this section may also be exercised by the duly authorized agents of the commissioner.

All rules and regulations promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provision of chapter twenty-nine-a of this code. The initial rules and regulations promulgated pursuant to this article shall be so promulgated within thirty days of the effective date hereof.

§60-8-24. Disposition of revenue.

(a) All fees collected by the commissioner under the provisions of this article shall be deposited in the state treasury and credited to a special fund to be known as the "wine license
special fund.” All moneys in such special fund may be expended only for the administration of the provisions of this article or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.

(b) The gallonage tax imposed and collected by the commissioner under the provisions of this article shall be paid into the state treasury and deposited in the general revenue fund of the state.

c) All moneys collected by the commissioner under the provisions of this article shall be remitted to the state treasury monthly within fifteen days after the end of each month.

§60-8-25. Criminal penalties; public nuisances.

(a) Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts herein declared to be unlawful, is guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than twenty-five dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both fined and imprisoned. Magistrate courts shall have concurrent jurisdiction with the circuit court for the trial of all misdemeanors arising under this article.

(b) The provisions of sections sixteen and seventeen, article six of this chapter shall apply to persons violating the provisions of this article to the same extent as if such provisions were set forth in extenso herein.

§60-8-26. Forfeiture of bond.

On conviction of a violation of any provision of this article or upon the revocation of a license in accordance with section eighteen of this article, which conviction or revocation has become final, the licensee or former licensee, as the case may be, shall forfeit any bond required by section twenty of this article. The penal sum of said bond shall forthwith be paid to the state treasurer and credited to the general revenue fund of
this state. Such sum may be collected by an action at law or
other appropriate remedy.

§60-8-27. Local option elections.

1 The question “Shall the sale of alcoholic beverages under
2 the West Virginia liquor control commission be permitted
3 in ____________________________”? stated in the petition and ballot under the provisions of sec-
4 tions three and five, article five of this chapter shall be
5 deemed to include therein the sale of wine under the pro-
6 visions of this article. Within thirty days after a “local option
7 election” conducted under the provisions of article five of
8 this chapter in which a majority has voted “No,” the com-
9 mission shall close all state stores and discontinue all agencies
10 within the county or municipality as provided in section seven,
11 article five of this chapter, and each retailer shall cease
12 the sale of wine.

PART III. WINE DISTRIBUTION.

§60-8-28. Registration of labels.

1 Every distributor and farm winery offering wine for sale
2 under this article shall register with the commissioner each
3 label offered for sale in the state and shall pay a fee of three
4 dollars for the registration of such label. No wine may be
5 sold under this article unless its label has been registered.

§60-8-29. Bond required of distributors.

1 Each applicant for a distributors license shall furnish
2 with his application a bond with a corporate surety authorized
3 to transact business in this state, payable to the state, and
4 conditioned on the payment of all taxes and fees herein
5 prescribed and on the faithful performance of and compliance
6 with the provisions of this article.

7 The penal sum of the bond shall be ten thousand dollars.

§60-8-30. Exclusive franchise agreements prohibited.

1 It shall be illegal for any manufacturer to enter into any
2 exclusive franchise agreement with any distributor whereby
3 any such distributor is given the exclusive right within this
state or in any given territory within this state to distribute the product or products of such manufacturer which are to be sold or distributed pursuant to the provisions of this article.

§60-8-31. Other unlawful acts.

It is unlawful:

(a) For a distributor to discriminate in price, sales agreements, terms or services offered to retailers or to any licensee under article seven of this chapter. "Discriminate" as used in this section means the granting of more favorable prices, agreements, terms or services to one person than to another.

(b) For a distributor, his agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under article seven of this chapter on Sunday or any general election day.

(c) For a distributor to sell wines authorized by this article to licensees under article seven of this chapter at a price which is greater than the price at which such wines are sold and distributed to retailers under this article.

Part IV. Wine Retailers.

§60-8-32. Where wine may be sold at retail.

Except as to sales permitted to be made by farm wineries as defined by section five-a, article one of this chapter, wine sold pursuant to this article may be sold at retail only by the commissioner and in and by grocery stores and wine specialty shops as defined by section two of this article.

§60-8-33. Certain prohibitions not applicable.

The prohibitions contained in subdivisions (h) and (j), section thirteen, article sixteen, chapter eleven of this code and the prohibitions contained in subdivisions (1), (2) and (3), section seven, article six of this chapter shall not apply to the holder of a retailer’s license issued under the provisions of this article: Provided, That all prohibitions contained within this article shall apply to the holder of a retailer’s license notwithstanding the provisions of this section.
§60-8-34. When retail sales prohibited.
1 It shall be unlawful for a retailer, his servants, agents or
2 employees to sell or deliver wine on any general or primary
3 election day, or prior to one o'clock p.m. or after nine o'clock
4 p.m. on Sundays, or between the hours of nine o'clock p.m.
5 and ten o'clock a.m. on weekdays and Saturdays.

§60-8-35. Other unlawful acts.
1 No person while on the premises of any retailer licensed
2 pursuant to this article shall:
3 (1) Break the seal on any package or bottle of wine;
4 (2) Consume alcoholic liquor, wine or beer; or
5 (3) Loiter.

CHAPTER 218
(Com. Sub. for H. B. 935—By Mr. Harman, 33rd Dist.)

[Passed March 5, 1981; in effect ninety days from passage. Disapproved by the
Governor, and repassed notwithstanding his objections.]

AN ACT to amend article one, chapter sixty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section five-a; to
amend and reenact sections one and nine-d, article three of
said chapter; to further amend said article three, by adding
thereto a new section, designated section twenty-five; to amend
and reenact sections two, three and fifteen, article four of
said chapter; and to amend and reenact sections one and two,
article six of said chapter, all relating to state control of
alcoholic liquors generally; permitting the establishment and
licensure of farm wineries in this state and defining the term
“farm winery”; limiting the amount of annual production at such
wineries; limiting the amount of grapes, grape juice, fruit,
fruit juice or honey imported; permitting the sale of wine
produced by such wineries at wholesale or retail; levying a
tax upon such sales; issuance of permit to import grapes,
grape juice, fruit, fruit juice or honey in excess of established limit; requiring a license for the operation of such license; establishing license fees for such wineries; and establishing regulation of hours of sale.

Be it enacted by the Legislature of West Virginia:

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

Article
3. Sales By Commissioner.
4. Licenses.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

1 For the purpose of this chapter: “Farm winery” shall mean an establishment where wine not exceeding fifty thousand gallons each year is manufactured exclusively by natural fermentation from grapes, other fruit or honey, twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent of such produce originating from any source outside this state

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-1. Sales at retail and wholesale.
§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.
§60-3-25. Permit for farm winery to import produce in excess of established limits.

*§60-3-1. Sales at retail and wholesale.

1 The sale of alcoholic liquors at wholesale and retail in this

*Clerk’s Note: Section 60-3-1 was also amended by H. B. 1111, now Chapter 217, which was passed on March 26, 1981.
state shall be a state monopoly, except for retail sales made by
authority of article six, section two and article seven of this
chapter. Alcoholic liquors shall be sold at retail only through
the state stores, agencies of the West Virginia alcohol beverage
control commissioner, and may be sold by private clubs holding
a license issued under the provisions of article seven of
this chapter.

The commissioner may sell such liquors at wholesale to
persons licensed to purchase at wholesale as provided in this
chapter and wine may be sold by farm wineries licensed under
and subject to the provisions of this chapter.

**§60-3-9d. Tax on purchases of intoxicating liquors outside cor-
porate limits of municipalities.**

For the purpose of providing financial assistance to and
for the use and benefit of the various counties and munici-
palities of this state, there is hereby levied a tax upon all
purchases of intoxicating liquor from state stores, other
agencies of the alcohol beverage control commissioner or
farm wineries, outside the corporate limits of any munici-
pality. The tax shall be three percent of the purchase price
and shall be added to and collected with the purchase price
by the commissioner: Provided, That no such tax shall be
collected on the intoxicating liquors sold by or purchased
from holders of a license issued under the provisions of article
seven of this chapter.

All such tax collected within one mile of the corporate limits
of any municipality within the state shall be remitted to such
municipality; all other tax so collected shall be remitted to the
county wherein collected: Provided, That where the corporate
limits of more than one municipality be within one mile of the
place of collection of such tax, all such tax collected shall
be divided equally among each of said municipalities: Pro-
vided, however, That such mile is measured by the most direct
hard surface road or access way usually and customarily used
as ingress and egress to the place of tax collection.

**Clerk's Note:** Section 60-3-9d was also amended by H. B. 1111, now Chapter 217,
which was passed on March 26, 1981 and also by H. B. 1331, now Chapter 163, which was
passed on April 10, 1981.
The commissioner by appropriate rules and regulations shall provide for the collection of such tax, separation or proration of the same and distribution thereof to the respective counties and municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the counties and municipalities.

§60-3-25. Permit for farm winery to import produce in excess of established limits.

Upon application by the holder of a farm winery license, filed with the West Virginia alcohol beverage control commissioner, showing, due to unusual climatic or other conditions adversely affecting its ability to obtain from within this state seventy-five percent of the grapes, grape juice, other fruits or fruit juices or honey necessary to produce its wine, the commissioner may issue to the applicant a permit to import such products in an amount deemed necessary by the commissioner to allow such farm winery to produce wine within the quota established by section five-a, article one of this chapter. The permit issued under this section shall not be effective for more than ninety days. The burden of proof shall be upon the applicant to show that grapes, grape juice, fruit, fruit juice or honey of the type normally used by the licensee are not available from any other source within the state of West Virginia, and no application for a permit under this section shall be considered by the commissioner unless it is accompanied by written findings by the West Virginia agriculture commissioner in support thereof.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

§60-4-3. To whom licensed manufacturer may sell.

§60-4-15. Amount of license fees.

§60-4-2. Licenses for manufacture.

The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:
(1) Distilleries, in which only alcoholic liquors other than wine or beer shall be manufactured;

(2) Wineries, in which only wines shall be manufactured;

(3) Breweries, in which beer shall be manufactured;

(4) Bottling plants, in which beer only shall be bottled;

(5) Industrial plants, in which alcohol is distilled, manufactured, or otherwise produced for scientific, chemical, mechanical or industrial purposes; and

(6) Farm wineries, in which only wines shall be manufactured and from which the wine so manufactured may be served or sold or both served and sold in accordance with the provisions of this chapter.

Licenses for manufacture shall authorize the manufacture and sale of alcoholic liquors as provided by this chapter.

§60-4-3. To whom licensed manufacturer may sell.

A person who is licensed to manufacture alcoholic liquors in this state may sell such liquors in this state only to the West Virginia alcohol beverage control commissioner, and to wholesalers and retailers licensed as provided in this chapter: Provided, That a holder of a farm winery license may sell wines manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a farm winery shall be subject to regulation by the commissioner. A manufacturer may sell alcoholic liquors outside of the state for use or resale outside of the state.

§60-4-15. Amount of license fees.

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

(1) Distilleries, five hundred dollars;

(2) Wineries, two hundred fifty dollars;

(3) Breweries, two hundred fifty dollars;

(4) Bottling plants, one hundred dollars;
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8   (5) Wholesale druggists, fifty dollars;
9   (6) Institutions, ten dollars;
10  (7) Industrial use, fifty dollars;
11  (8) Industrial plants producing alcohol, two hundred fifty dollars;
12  (9) Retail druggists, ten dollars; and
13  (10) Farm wineries, fifty dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

§60-6-2. When lawful to manufacture and sell wine and cider.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

1   The provisions of this chapter shall not prevent:

2   (1) A person from keeping and possessing alcoholic liquors
3   in his residence for the personal use of himself, his family, his
4   servants or his guests if such alcoholic liquors shall have been
5   lawfully acquired by him;

6   (2) A person, his family, or servants from giving or
7   serving such alcoholic liquors to guests in said residence, when
8   such gift or service is not for the purpose of evading the
9   provisions of this chapter; and

10  (3) The holder of a farm winery license from serving
11   complimentary samples of its wine in moderate quantities for
12   tasting at the winery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

1   The provision of this chapter shall not prevent:

2   (1) A person from manufacturing wine at his residence for
3   consumption at his residence as permitted by section one of this
4   article;

5   (2) A person from manufacturing and selling unfermented
6   cider;

7   (3) A person from manufacturing and selling cider made
8   from apples produced by him within this state, to persons
holding distillery licenses, but such manufacture and sale
shall be under the supervision and regulation of the com-
mmissioner;

(4) A person from manufacturing and selling wine made
from fruit produced by him within this state to persons holding
winery licenses, but such manufacture and sale shall be
under the supervision and regulation of the commissioner;

and

(5) The holder of a farm winery license from selling
wine produced by it directly to consumers or to any other
person who is licensed under this chapter to sell wine either
at wholesale or at retail.

CHAPTER 219
(H. B. 1704—By Mr. Blackwell)

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

AN ACT to amend and reenact section two, article five, chapter
twenty-three of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to requiring the
workmen’s compensation appeal board to meet the first Tuesday
of every month for a period of two days or as long as neces-
sary to transact its business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.

There shall be a board to be known as the “Workmen’s
Compensation Appeal Board,” which shall be referred to in
this article as the “board,” to be composed of three members.
Two members of such board shall be of opposite politics
to the third, and all three shall be citizens of this state who
have resided therein for a period of at least five years. All
members of the board shall be appointed by the governor
and shall receive an annual salary in accordance with the
provisions of section two-a, article seven, chapter six of this
code. The salaries shall be payable in monthly installments,
and the members shall also be entitled to all reasonable and
necessary traveling and other expenses actually incurred while
engaged in the performance of their duties. The governor
shall designate one of the members of the board as chairman
thereof, and the board shall meet at the capitol or at such
other places throughout the state as it may deem proper at
regular sessions designated as "Appeal Board Hearing Days"
commencing on the first Tuesday of every month or the
next regular business day, for a period of at least three
days, for the purpose of conducting hearings on appeals,
and continuing as long as may be necessary for the
proper and expeditious transaction of the hearings, de-
cisions and other business before it. All clerical services re-
quired by the board shall be paid for by the compensation
commissioner from any funds at his disposal. The board shall,
from time to time, compile and promulgate such rules of
practice and procedure as to it shall appear proper for the
prompt and efficient discharge of its business and such rules
shall be submitted to the supreme court of appeals for approval,
and if approved by such court shall have the same force and
effect as the approved rules of procedure of circuit courts. The
board shall employ such clerical staff as may be necessary for
the efficient conduct of its business but the number of such em-
ployees shall not exceed four. Salaries of the board, and its em-
ployees, and all of its necessary operating expenses shall be
paid from the workmen's compensation fund. The board shall
submit its annual budget to the state compensation commis-
er for inclusion as a separate item in the budget estimates pre-
pared by him annually and within the limits of such budget, all
expenses of the board shall be by the requisition of the com-
missioner. Salaries of the employees of the board shall be fixed
by the board.

The board shall report monthly to the governor and com-
missioner on the status of all claims on appeal.
CHAPTER 220
(S. B. 395—By Mr. Staggers and Mr. Steptoe)

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

AN ACT authorizing the county commission of Berkeley County to make expenditures from the county general fund for the support of the Mountain State Apple Harvest Festival.

Be it enacted by the Legislature of West Virginia:

MOUNTAIN STATE APPLE HARVEST FESTIVAL.

§1. Support of Mountain State Apple Harvest Festival.

1 The county commission of Berkeley County is hereby authorized, in its discretion, to expend a sum of money not to exceed two thousand five hundred dollars per year from the general fund of that county for the support of the Mountain State Apple Harvest Festival when held in Berkeley County.

CHAPTER 221
(H. B. 1791—By Mr. Martin, 35th Dist., and Mr. Stephens)

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

AN ACT authorizing the county commission of Berkeley County to make expenditures from the county general fund to contribute to a nonprofit charitable corporation known as the associates for community development to aid in construction of congregate housing projects for the elderly in Berkeley County.

Be it enacted by the Legislature of West Virginia:

EXPENDITURES BY BERKELEY COUNTY COMMISSION.

§1. Support of congregate housing for the elderly.

1 The county commission of Berkeley County is hereby authorized in its discretion, to expend money from the general fund in that county to contribute to a nonprofit, charitable
corporation known as the associates for community development to aid in construction of congregate housing projects for the elderly in Berkeley County.

CHAPTER 222

(Com. Sub. for H. B. 1591—By Mr. Chambers)

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

AN ACT to amend and reenact sections three and four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter one hundred forty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy-four, relating to the Cabell County youth center; medium security school for the detention of juveniles adjudged delinquent; and providing that the board of supervisors and executive director shall be responsible for its operation.

Be it enacted by the Legislature of West Virginia:

That sections three and four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended by chapter one hundred forty-seven, acts of the Legislature, regular session, one thousand nine hundred seventy-four, be amended and reenacted to read as follows:

CABELL COUNTY YOUTH CENTER.

§3. Medium security school.

§4. Foster homes division.

§3. Medium security school.

1 The medium security school of the Cabell County youth center shall be maintained at the Cabell County farm at Ona, West Virginia by the board of supervisors as one of the divisions of the Cabell County youth center. It may be used for the detention of juveniles pending hearings before the juvenile court of Cabell County within the discretion of the judge of said court; and it shall be used for the training of
juveniles who have been adjudged delinquent and committed thereto by said court. It shall not be deemed a penal institution, a jail or prison. It shall be conducted and respected as comparable to a “school away from home.” There shall be maintained at the school, or in close proximity thereto, by the board of supervisors, sufficient classrooms and equipment for the proper education and training during the regular nine months school period, of all juveniles residing in said medium security school. The board of education of Cabell County, at its own expense, shall furnish sufficient teachers of proper qualifications to adequately staff said classrooms and to furnish proper educational training for all those committed to said school, to the end that those so committed shall be allowed and required to progress in education and in spiritual and moral development in preparation for a return to a normal life.

The board of supervisors may appoint an assistant director in charge of the medium security school who shall be answerable to the executive director and to the board. The assistant director in charge of the medium security school shall be provided with such other personnel as to the board may seem necessary to assist in maintaining the school, securing the custody of the juveniles therein, and carrying out general supervision of the school to the end that order and discipline shall be maintained. Compensation to be paid the assistant director and all personnel of said school shall be fixed by the board and paid as hereinafter provided.

The board of supervisors, shall, within its discretion, have the power and authority to accept juveniles upon commitment by the juvenile courts of other counties in West Virginia, and to make arrangements with the county commission of such counties for the payment of the fair per capita, per diem cost for each juvenile so committed, and which payments shall be credited to the fiscal account of the Cabell County youth center.

The procedure for the release of juveniles committed to the medium security school shall be as follows:

After a juvenile has been committed to the school he shall be advised by the executive director of his right to apply in writing for release. He shall be afforded and may sign a peti-
tion in which he shall state the reasons he thinks are grounds for his release. The executive director shall then call a meeting with the assistant director, the teachers and all other paid employees who have had personal contact with and supervision of said juvenile and said staff shall then review the petition and shall make such recommendations as they deem proper to the next meeting of the board of supervisors. After review of the juvenile's petition and record the board may take such action as to it may seem proper. If the board be of opinion to recommend the release of the juvenile it shall then submit such recommendation to the juvenile court over the signature of the executive director, the president of the board and the teacher that last had the juvenile in school.

Within a reasonable time thereafter the juvenile court shall review the case history of the juvenile and after considering the recommendations of the staff and the board, shall enter such order as to the court may seem to be in the best interest of the juvenile.

§4. Foster homes division.

The foster homes division of the Cabell County youth center shall be erected and maintained at the Cabell County farm at Ona, West Virginia, as homes for Cabell County children who are orphans, homeless, neglected and deserted, or who have been adjudged delinquent and committed thereto, as herein provided, or who, if permitted to run ungoverned or undisciplined, are apt to become delinquent, and which said children are within the age prescribed by the statutes of this state for juveniles.

The board of supervisors of the Cabell County youth center shall cause to be erected and maintained at said farm sufficient cottages and of capacity to comfortably house in each cottage not more than twenty children.

A part of the facilities of the foster homes division may be utilized for a diagnostic clinic and treatment center.

The foster homes division shall be made available for any and all Cabell County children now or hereafter to be under the control of the state or county department of welfare, all Cabell County children cared for by any of the other welfare
agencies, youth or child centers, private homes or institutions within the county, and all Cabell County children adjudged to be delinquent pursuant to the provisions of section eleven, article five, chapter forty-nine of the code and pursuant to disposition by the circuit court in accordance with the provisions of subdivision (6), subsection (b), section thirteen, article five, chapter forty-nine, and for the purposes set forth in article five-b, chapter forty-nine of the code.

For the support and maintenance of the children placed in said foster homes division by the department of welfare, they shall contribute the standard amount paid by the departments to private foster homes in other counties of the state. The money so contributed shall be paid to the county commission of Cabell County and by the commission set aside for the use of said foster homes division. The executive director is further authorized to contract with the department of welfare for the provision of services and support and maintenance of such children.

The "cottage parents" and all other personnel required for the efficient operation of said cottages in which children are maintained shall be carefully selected by the board of supervisors or executive director. Said "cottage parents" under the guidance and supervision of the board of supervisors or executive director shall be responsible for the supervision and training of all the children committed to their care; for keeping them in school during school terms and hours; for teaching them to do a reasonable amount of work, and for making each cottage as nearly self-supporting as possible.

Complete supervision of the foster homes division, together with the employment and discharge of any and all personnel including "cottage parents" shall be under the board of supervisors and executive director. The salary of each person so employed shall be reasonable and determined by the board, and when approved by the board of supervisors shall be certified for payment as is provided in section six, as last amended by chapter two hundred, acts of the Legislature, regular session, one thousand nine-hundred sixty-three. In advance of the submission by the board of supervisors of the estimate of all monetary needs of the Cabell County youth center to the coun-
ty commission as provided in section six, as last amended by chapter two hundred, acts of the Legislature, regular session, one thousand nine-hundred sixty-three, the executive director shall furnish to the board of supervisors an estimate of all reasonable monetary needs of the foster homes division for the next fiscal year, said estimate shall cover all anticipated costs for services for all employees and personnel employed in the reasonable operation of said foster homes, and all other reasonable expenses incident thereto, and which said estimate shall be certified to the board of supervisors and by that board included in the estimate rendered to the county commission of Cabell County as required by paragraph one, section six, as last amended by chapter two hundred, acts of the Legislature, regular session, one thousand nine hundred sixty-three.

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CHAPTER 223

(H. B. 1352—By Mr. Speaker, Mr. See)

[Passed April 7, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Hardy County public library, Hardy County, West Virginia, organized under article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it enacted by the Legislature of West Virginia:

HARDY COUNTY PUBLIC LIBRARY.

§1. Levies by county commission, county board of education and town of Moorefield to support the Hardy County public library.

§2. Disbursements.

§3. Effect of future amendments of general laws.

§4. Severability.

§1. Levies by county commission, county board of education and town of Moorefield to support the Hardy County public library.

In order to provide for the support, maintenance and operation of the Hardy County public library, Hardy County,
West Virginia, and any and all branches thereof, the Hardy County board of education, the Hardy County commission and the town of Moorefield, hereinafter described as the supporting agencies, shall, upon written request by the board of directors of the Hardy County public library, levy annually on each one hundred dollars of assessed valuation of the property taxable according to the last assessment for state and county purposes, amounts as follows: By the board of education of the County of Hardy, Class I, two mills; Class II, two mills; Class III, two mills; Class IV, two mills; by the county commission of Hardy County, Class I, one-half cent; Class II, one cent; Class III, one cent; Class IV, one cent; and by the town of Moorefield, Class I, half cent; Class II, one cent; Class IV, half cent.

Each year the board of directors shall request each of the three supporting agencies to levy within the above rates on each one hundred dollars of assessed valuation of property of the same class, and each of the three supporting agencies shall levy within the rates aforesaid. In addition, each supporting agency may contribute to the public library any other general or specific revenues or excess levies. All income realized by the operation of the public library from any sources other than the above levies shall be used by the board of directors for the support and maintenance of the public library.

§2. Disbursements.

All money collected or appropriated by the three supporting agencies for library purposes shall be deposited in a bank account as directed by the library board of directors and disbursed by it for salaries, wages, books and other library materials such as magazines, pamphlets, papers, works of art, records, machinery, equipment, supply services and other costs and expenses of operating a public library and maintaining, repairing, improving and replacing its property as well as acquiring additional property.

§3. Effect of future amendments of general law.

Amendments to article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall not control this act
4 except to the extent that they do not conflict with the special
5 features hereof, or unless the intent to amend this act is clear,
6 specific and unmistakable.

§4. Severability.
1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are declared to be severable.

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CHAPTER 224
(H. B. 1327—By Mr. Wiedebusch and Mr. Yanni)

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

AN ACT authorizing the county commission of Marshall County to
make expenditures from the county general fund for the
support of the Marshall County fair organization.

Be it enacted by the Legislature of West Virginia:

MARSHALL COUNTY FAIR ORGANIZATION.

§1. Support of Marshall County fair.
1 The county commission of Marshall County is hereby
2 authorized, in its discretion, to expend a sum of money not
3 to exceed fifteen thousand dollars per year from the general
4 fund of that county for the support of the Marshall County
5 fair organization.

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CHAPTER 225
(H. B. 1317—By Mr. Speaker, Mr. See)

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

AN ACT to authorize the sale by the West Virginia Department of Agriculture of a tract of land in Moorefield and providing
that the proceeds of such sale be used for capital improvements to the newly constructed agricultural center in Hardy County.

Be it enacted by the Legislature of West Virginia:

SALE OF DEPARTMENT OF AGRICULTURE LAND IN MOOREFIELD, WEST VIRGINIA.

§1. Department of agriculture authorized to sell land located in Moorefield, West Virginia, and use the proceeds for certain capital improvements.

The department of agriculture is hereby authorized and empowered to sell a certain lot and parcel of land consisting of approximately sixty-five hundred square feet, located in the Town of Moorefield, Moorefield District, Hardy County, West Virginia, being the same lot and parcel more fully described in Deed Book 82, page 374 in the county clerk's office of said county, by means of a private sale, public auction, or other reasonable method of sale, for a price not less than an independently appraised value. The proceeds from the sale of such property shall be utilized solely for the purpose of capital improvements to the newly constructed agricultural center located in the Moorefield Industrial Park, Hardy County, West Virginia.
Memorializing the Congress of the United States to support the continuation of the federal black lung benefits program.

WHEREAS, The people of West Virginia support continuation of the federal black lung benefits program which requires coal industry employers to compensate employees who are inflicted with disabling pulmonary and respiratory diseases caused by years of coal mine employment; and

WHEREAS, The production of American coal, and its energy derivatives, is central to all feasible plans to make the Nation secure and independent of foreign sources of energy and all possible domination by foreign governments over our national economic and political stability; and

WHEREAS, The production of coal sufficient to so secure the Nation will cause present and future coal workers to suffer the same dreaded diseases now compensated by coal industry employers as a result of the federal black lung benefits program; and

WHEREAS, The infliction of disabling pulmonary and respiratory diseases upon present and future coal workers will rob them of the physical comfort and dignity and the financial security which is enjoyed by other American workers in the mature years of their employment and in the golden years of their lives, ending so many before their time; and

WHEREAS, Those coal workers deserve to share equally with other American workers in the Nation's well-established commitment to make dignified and to make secure those years which follow the lifetimes of dedicated service to the Nation by working Americans; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States be requested to continue
in full force and effect the federal black lung benefits program; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President of the United States, United States Senators Robert C. Byrd and Jennings Randolph, the West Virginia Delegation in the House of Representatives and the presiding officers of the legislatures of the coal producing states.

\[\text{HOUSE CONCURRENT RESOLUTION NO. 35}\
\text{(By Mr. Tompkins)}\
\text{[Adopted April 9, 1981.]}\]

Authorizing the Judith A. Herndon Legislative Fellows Program for college and university students in West Virginia.

WHEREAS, The Legislature desires to provide a special learning experience for selected undergraduates from West Virginia’s public and private colleges and universities so that students may learn about the legislative branch of government through a concentrated and organized work/study program for four months, encompassing regular sessions of the Legislature; and

WHEREAS, The Joint Committee on Government and Finance authorized a pilot program that is now in operation, which program was designated as the Judith A. Herndon Fellows Program in memory of the late Senator Judith A. Herndon; and

WHEREAS, This pilot program should be continued; therefore, be it

Resolved by the Legislature of West Virginia:

That the Judith A. Herndon Fellows Program, currently in operation as a pilot program for selected undergraduate students from West Virginia’s public and private colleges and universities, is hereby continued as an ongoing program of the Legislature and shall operate under the supervision and direction of the Joint Committee on Government and Finance. The Joint Committee on Government and Finance and the program in the future will be guided by the program plan previously adopted by the Joint Com-
mittee for the pilot program, but the Joint Committee is authorized to amend the program to provide improvements and enhancements as experience dictates. Legislative funds necessary for the expense of the program shall be paid from legislative appropriations to the Joint Committee on Government and Finance, but expenditures therefor or may be made only upon prior authorization by the Joint Committee.

SENATE CONCURRENT RESOLUTION NO. 13
(By Mr. Rogers, Mr. Tomblin, Mr. McGraw, Mr. President, and Mr. Wise)

[Adopted April 11, 1981]

Recommending that a joint investigatory interim committee of the Legislature meet after the 1981 Regular Session to conduct hearings and a complete review of the events following the Buffalo Creek disaster.

WHEREAS, There was a disaster in the Buffalo Creek area of Logan County in February of 1972, wherein 125 people died; millions of dollars of property was damaged or destroyed; and the lives of the survivors of the families and their friends received irreparable emotional and physiological harm; and

WHEREAS, The Pittston Company, the parent company of the Buffalo Mining Company, was found to be responsible for the failure of the refuse dams at their mining operation upstream from the community of Buffalo Creek; and

WHEREAS, Extraordinary recovery efforts by various elements of local, state and federal governments resulted in a tremendous outlay of public funds for this privately caused disaster; and

WHEREAS, The individual citizens of the State of West Virginia have not been provided with a complete explanation relating to the repayment by the Pittston Company of the additional financial burden on all of the governmental units participating in the recovery efforts; therefore, be it

Resolved by the Legislature of West Virginia:

That the 65th Legislature be required to appoint a joint investigatory interim committee made up of five members of the House
of Delegates to be appointed by the Speaker and five members of the Senate to be appointed by the President to meet after the 1981 regular session at such times as are appropriate and conduct hearings and a complete review of the events following the Buffalo Creek disaster; and, be it

Further Resolved, That the Attorney General of the State of West Virginia be directed to provide all of the documentation of the events relative to the repayment of all debts owed to all governmental units to the special investigatory committee, and also stand ready to enter into whatever legal actions that the special interim committee may deem necessary to recover any deficient funds; and, be it

Further Resolved, That the results and findings of this investigation be reported to the Second Regular Session of the Sixty-fifth Legislature upon the completion of the investigation.

SENATE CONCURRENT RESOLUTION NO. 15
(By Mrs. Spears and Mr. Moreland)

Providing for a Silver Haired Legislature conducted by elected Delegates and Senators who are persons over sixty years old to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia State Legislature have continually evidenced their special concern for issues affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, It is appropriate for older West Virginians to communicate their concerns to their elected officials; and

WHEREAS, It is appropriate or the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, A Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years of age and over
can offer an opportunity for older West Virginians to learn about the State’s legislative process and, at the same time, prepare a list of proposed legislation to the West Virginia Legislature representing the concerns of our elders; and

WHEREAS, The West Virginia Commission on Aging plans to hold such a session in West Virginia in 1981; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 65th West Virginia Senate and the first session of the 65th West Virginia House of Delegates grant permission for the Silver Haired Legislature to utilize the senate and house chambers and appropriate hearing and meeting rooms for a one-day training session in September, 1981, and a three-day legislative session during November, 1981; and, be it

Resolved Further, That Legislative Services assist the Silver Haired Legislature with the bill drafting, bill review and bill printing processes to the maximum extent possible as determined by the director of Legislative Services.

SENATE JOINT RESOLUTION NO. 12
(By Mr. McGraw, Mr. President)

Adopted April 11, 1981.

Proposing an amendment to the Constitution of the State of West Virginia, authorizing the issuance and sale of state road bonds not exceeding in the aggregate seven hundred fifty million dollars and with no more than seventy-five million dollars of such aggregate amount to be issued or sold in any fiscal year for economic development access roads, upgrading bridges throughout the State, federal aid matching, Appalachian Corridors, upgrading state local service roads and expressway, trunkline and feeder roads, upgrading State Route 2 and construction of the Weirton-Steubenville Bridge and Route 22 Bypass, construction of the Charles Town Bypass, and U. S. Route 52 and West Virginia Route 10 and their feeder roads (known as the “Intermountain Highway System”); numbering and designating such proposed amendment; and providing a
summarized statement of the purpose of such proposed amend-
ment.

Resolved by the Legislature of West Virginia, two thirds of the
members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment
to the Constitution of the State of West Virginia be submitted to
the voters of the State at a special election to be held in the year
one thousand nine hundred eighty-one, on a date proclaimed by the
Governor, which date shall be at least three months from the adop-
tion of this resolution, for the purpose of presenting to the voters
of the State the question of ratification or rejection of one or more
constitutional amendments, which proposed amendment is as follows:

ROADS FOR JOBS AND PROGRESS AMENDMENT

The Legislature shall have power to authorize the issuing and
selling of state bonds not exceeding in the aggregate seven hundred
fifty million dollars, and with no more than seventy-five million
dollars of such aggregate amount to be issued or sold in any fiscal
year. The purpose of these bonds shall be to complete a modern
system of highways, roads and bridges throughout the State of West
Virginia; to facilitate economic development and to create new jobs
for West Virginians. The proceeds of said bonds hereby authorized
to be issued and sold shall be used and appropriated solely for the
following purposes and in the following amounts:

(1) Twenty-five million dollars for economic development access
roads;

(2) One hundred million dollars for upgrading bridges throughout
the State;

(3) One hundred million dollars for federal aid matching;

(4) One hundred million dollars for Appalachian Corridors;

(5) One hundred fifteen million dollars for upgrading state local
service roads and expressway, trunkline and feeder roads;

(6) One hundred seventy-five million dollars for upgrading State
Route 2 and construction of the Weirton-Steubenville Bridge and
Route 22 Bypass;
(7) Thirty-five million dollars for construction of the Charles Town Bypass;

(8) One hundred million dollars for U.S. Route 52 and West Virginia Route 10 and their feeder roads (known as the "Intermountain Highway System").

The Legislature shall have power to authorize the issuing and selling of state bonds to refund any bonds issued and sold as aforesaid: Provided, That the actuarially determined present value of the debt service on the refunding bonds is less than that of the bonds being refunded.

When a bond issue or refunding bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any one year only to the extent that the moneys in the State Road Fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Roads for Jobs and Progress Amendment" and the purpose of the proposed amendment is summarized as follows: "To empower the Legislature to authorize the issuing and selling of state bonds, for completing a modern system of highways, roads and bridges throughout the State which encourage economic development and the creation of new jobs for West Virginians. These bonds shall not exceed in the aggregate seven hundred fifty million dollars, with no more than seventy-five million dollars to be issued or sold in any fiscal year, and shall be used for economic development access roads, upgrading bridges throughout the State, federal aid matching, Appalachian Corridors, upgrading state local service roads and expressway, trunkline and feeder roads, upgrading State Route 2 and construction of the Weirton-Steubenville Bridge and Route 22 Bypass, construction of the Charles Town Bypass, and U.S. Route
52 and West Virginia Route 10 and their feeder roads (known as the "Intermountain Highway System").
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1981

CHAPTER 1

(Com. Sub. for S. B. 1—By Mr. McGraw, Mr. President)

[Passed May 14, 1981: in effect from passage. Approved by the Governor
with deletions and reductions.]

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

Be it enacted by the Legislature of West Virginia:

Title
2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.

1 Section 1. General policy.—The purpose of this act 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-two.

1 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-two" shall mean the period from July first, one thousand nine hundred eighty-one through June thirtieth, one thousand nine hundred eighty-two.

"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;

"Capital Outlay" shall mean and include buildings, lands, or buildings and lands, with such category or item of appropriation to remain in effect as provided by Chapter 12, Article 3, Section 12 of the Code of West Virginia; and

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

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this act.
## TITLE 2. APPROPRIATIONS.

### §1. Appropriations from general revenue.

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- Department of agriculture (division of rural resources)—Acct. No. 5130
- Department of agriculture (meat inspection)—Acct. No. 5140
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- Ohio river basin commission—Acct. No. 4690
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- State boxing commission—Acct. No. 4790
- West Virginia air pollution control commission—Acct. No. 4760
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- Department of education—Acct. No. 2860
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West Virginia board of regents (control) - Acct. No. 2790
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West Virginia library commission - Acct. No. 3500
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West Virginia University (medical school) - Acct. No. 2850

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Governor's office (civil contingent fund) - Acct. No. 1240
Governor's office (custodial fund) - Acct. No. 1230
Governor's office (disaster relief-matching) - Acct. No. 1260
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#### PAYABLE FROM WORKMEN'S COMPENSATION FUND

<table>
<thead>
<tr>
<th>Department</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen's compensation commission</td>
<td>9000</td>
<td>1218</td>
</tr>
</tbody>
</table>

§3. Awards for claims against the state.

§4. Reappropriations.

§5. Supplemental and deficiency appropriation.

- Revenue sharing trust fund (Governor's office
- Civil contingent fund) Acct. No. 9721

§6. Appropriations from revenue sharing trust fund

- Department of Agriculture Acct. No. 9771
- Department of Highways Acct. No. 9705
- Department of Natural Resources Acct. No. 9725

§7. Appropriations from countercyclical fiscal assistance fund.

§8. Reappropriations—Revenue sharing trust fund.

§9. Special revenue appropriations.

§10. State improvement fund appropriations.

§11. Specific funds and collection accounts.

§12. Appropriations for refunding erroneous payments.


§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-two.

LEGISLATIVE

1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1981-1982</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Compensation of Members</td>
<td>$302,500</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and employees</td>
<td>$825,000</td>
</tr>
<tr>
<td>4 Expenses of Members</td>
<td>$275,000</td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund</td>
<td>$330,000</td>
</tr>
<tr>
<td>6 Printing Blue Book</td>
<td>$175,000</td>
</tr>
<tr>
<td>6a Repairs and Alterations</td>
<td>$100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,007,500</strong></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 1980-81 are to remain in full force and effect, and are hereby reappropriated to June 30, 1982.

Any balances so reappropriated may be transferred and credited to the 1981-82 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 the service.

The Clerk of the Senate, with approval of the President
is authorized to draw his requisition 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 written 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 written 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 February, 1981, 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>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$886,400</td>
</tr>
<tr>
<td>Compensation and per diem of officers and employees</td>
<td>$550,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$450,000</td>
</tr>
</tbody>
</table>
The appropriations for the House of Delegates for the fiscal year 1980-81 are to remain in full force and effect, and are hereby reappropriated to June 30, 1982.

Any balances so reappropriated may be transferred and credited to the 1981-82 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.

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, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution, for the session, or fixed by the Speaker, with the approval of the House Committee on Rules, during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House is hereby authorized to draw requisitions upon the State Auditor, payable from the Compensation and per diem of officers and employees item or the Current Expenses and Contingent Fund item of the House of Delegates, for such services.

For duties imposed by law and by the House of Dele-
gates, 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 the House resolution, unless increased between sessions under the authority of the Speaker, with approval of the House Committee on Rules, and payable from the Compensation and per diem of officers and employees item or the Current Expenses and Contingent Fund item of the House of Delegates.

### 3—Joint Expenses

**Acct. No. 1030**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$3,753,912</td>
</tr>
<tr>
<td>To pay cost of Legislative Printing</td>
<td>775,000</td>
</tr>
<tr>
<td>Other Legislative Committees</td>
<td>50,000</td>
</tr>
<tr>
<td>Commission on Interstate Cooperation</td>
<td>88,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,666,912</strong></td>
</tr>
</tbody>
</table>

The appropriations for Joint Expenses for the fiscal year 1980-81 are to remain in full force and effect and are hereby reappropriated to June 30, 1982. Any balances so reappropriated may be transferred and credited to the 1981-82 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**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$13,293,546</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>1,870,289</td>
</tr>
<tr>
<td>Judges Retirement System</td>
<td>750,000</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>1,879,980</td>
</tr>
<tr>
<td>Judicial Training Program</td>
<td>50,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund</td>
<td>180,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$18,023,815</strong></td>
</tr>
</tbody>
</table>
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 the fiscal year 1980-81 is hereby appropriated for expenditure during the fiscal year 1981-82.

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>$ 60,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$ 992,160</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 237,971</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 4,660</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,294,791</strong></td>
</tr>
</tbody>
</table>

6—Office of Economic and Community Development

Acct. No. 1210

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 2,701,185</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 2,916,606</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 21,069</td>
</tr>
<tr>
<td>The Economic Development Loan Fund</td>
<td>$ 4,000,000</td>
</tr>
<tr>
<td>Regional Council—to match Federal Funds</td>
<td>$ 220,000</td>
</tr>
<tr>
<td>A.R.C. Assessment</td>
<td>$ 412,500</td>
</tr>
<tr>
<td>Partnership grants</td>
<td>$ 5,500,000</td>
</tr>
<tr>
<td>Fire Departments</td>
<td>$ 1,500,000</td>
</tr>
<tr>
<td>Coal Development Authority</td>
<td>$ 875,000</td>
</tr>
<tr>
<td>Emergency Assistance to Small Municipal and Public Service Districts Water and Sewage Systems</td>
<td>$ 500,000</td>
</tr>
</tbody>
</table>
Ch. 1

APPROPRIATIONS

13 *Flood .......................................................... $ 1,000,000

14 Total .......................................................... $ 19,646,360

15 Any unexpended balance remaining in accounts "Federal-State Coordination," "Office of Criminal Justice and Highway Safety" and "Regional Council to match Federal Funds" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

16 Any unexpended balance remaining in the account "Community Water Development Grants and Partnership Grants" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

7—Governor’s Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total ........................................... $ 284,977

2 To be used for current general expenses, including 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 ........................................... $ 1,000,000

2 Of the appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia’s contribution to the Interstate Oil Compact Commission.

3 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

9—Governor’s Office—Disaster Relief-Matching

Acct. No. 1260

1 Unclassified—Total ........................................... $ 50,000

2 To match and aid Federal Programs, and any part of

* Clerk’s Note: The word “Prevention” on line 13 was stricken by the Governor.
3 this appropriation may be transferred to any department for such purposes.

10—Office of Emergency Services

Acct. No. 1300

1 Personal Services ............... $ 215,582
2 Current Expenses .................. 40,671
3 Total ................................ $ 256,253

FISCAL

11—Auditor’s Office—General Administration

Acct. No. 1500

1 Salary of State Auditor ............... $ 39,000
2 Other Personal Services .......... 1,369,378
3 Current Expenses .................. 489,390
4 Equipment ................................ 39,699
5 Microfilm ................................ 20,000
6 West Virginia Public Legal Services Council .. 3,400,000
7 Total ................................ $ 5,357,467

12—Auditor’s Office—Social Security

Acct. No. 1510

1 To match contributions of state employees for Social Security—Total ........ $ 17,900,000
3 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.

12 Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.
13—Treasurer’s Office
Acct. No. 1600

1 Salary of State Treasurer ............................................. $ 42,000
2 Other Personal Services .................................................. 677,422
3 Current Expenses .......................................................... 261,107
4 Equipment ................................................................. 30,000
5 Microfilm Program ....................................................... 8,085

6 Total .............................................................................. $ 1,018,614

14—Treasurer’s Office—School Building Sinking Fund
Acct. No. 1650

1 Total .............................................................................. $ 17,136,500

2 Any unexpended balance remaining in the appropriation for “Treasurer’s Office—School Building Sinking Fund” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

15—Municipal Bond Commission
Acct. No. 1700

1 Personal Services ......................................................... $ 74,687
2 Current Expenses ............................................................. 22,379
3 Equipment ....................................................................... 200

4 Total ................................................................................ $ 97,266

16—State Tax Department
Acct. No. 1800

1 Personal Services ............................................................. $ 7,977,080
2 Current Expenses ............................................................. 2,753,276
3 Repairs and Alterations .................................................. 14,520
4 Equipment ....................................................................... 121,488
5 Circuit Breaker Reimbursement ....................................... 15,000
6 Other Expenses .................................................................. 725,546
7 Multi-State Tax Compact .................................................. 57,500

8 Total ................................................................................ $ 11,664,410

9 Any unexpended balance remaining in the appropriation for “Other Expenses” at the close of the fiscal year
1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

17—Department of Finance and Administration

Acct. No. 2100

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,847,180</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$894,285</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$277,700</td>
</tr>
<tr>
<td>Equipment</td>
<td>$21,200</td>
</tr>
<tr>
<td>Postage</td>
<td>$812,500</td>
</tr>
<tr>
<td>Utilities</td>
<td>$385,000</td>
</tr>
<tr>
<td>T.R.I.P. Program</td>
<td>$350,000</td>
</tr>
<tr>
<td>Fire Service Fee</td>
<td>$106,000</td>
</tr>
<tr>
<td>Building Equipment and Supplies</td>
<td>$10,000</td>
</tr>
<tr>
<td>So. Regional Ed. Board</td>
<td>$80,000</td>
</tr>
<tr>
<td>Council of State Governments</td>
<td>$34,500</td>
</tr>
<tr>
<td>National Governors Association</td>
<td>$32,800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,851,165</strong></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 1980-81 is hereby
reappropriated for expenditure during the fiscal year
1981-82.

Any unexpended balances remaining at the close of the
fiscal year 1980-81 for “Major Building Repairs” is hereby
reappropriated for expenditure during the fiscal year
1981-82 (Major Building Repairs to include maintenance
and repairs to Governor's Mansion).

State Department of Highways shall reimburse the ap-
propriation of the Department of Finance and Adminis-
tration monthly for all actual expenses incurred pursuant
to the provisions of Chapter 17, Article 2A, Section 13
of the Code of West Virginia.

18—State Board of Insurance

Acct. No. 2250

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$100,547</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$25,477</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,270</td>
</tr>
<tr>
<td>Premiums, Claims and Other Expenses</td>
<td>$2,100,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,227,294</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 prop-
erty, 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 “Premiums,
Claims and Other Expenses” may be transferred to a
special account for the payment of premiums, self-insur-
ance losses, loss adjustment expenses and loss prevention
engineering fees.

Any or all of the funds appropriated for “Premiums,
Claims and Other Expenses” may be transferred to a
special account for disbursement for payment of premi-
ums and insurance losses.
LEGAL
19—Attorney General
Acct. No. 2400

1 Salary of Attorney General .................................. $ 42,000
2 Other Personal Services ........................................... 1,637,453
3 Current Expenses .................................................. 329,881
4 Equipment .................................................................. 73,500
5 Publication of Reports and Opinions ....................... 20,000
6 To protect the resources or tax structure of the state in controversies or legal proceedings affecting same ....... 3,250
7 Consumer Protection .................................................. 261,810
   Personal Services .................................................. 205,036
   Current Expenses .................................................. 50,474
   Equipment .................................................................. 6,300

10 Total ....................................................................... $ 2,367,894

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.

Any unexpended balance remaining in the appropriation for "Publication of Reports and Opinions" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

20—Commission on Uniform State Laws
Acct. No. 2450

1 Unclassified—Total ................................................. $ 12,000
2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING
21—Secretary of State
Acct. No. 2500

1 Salary of Secretary of State ...................................... $ 36,000
2 Other Personal Services ............................................. 428,593
3 Current Expenses ..................................................... 160,000
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Equipment</td>
<td>25,500</td>
</tr>
<tr>
<td>5 Certification of Primary and General Elections</td>
<td>4,950</td>
</tr>
<tr>
<td>6 Publication of State Register</td>
<td>1,650</td>
</tr>
<tr>
<td>7 Rules and Regulations Division</td>
<td>26,000</td>
</tr>
<tr>
<td>8 Special Election</td>
<td>1,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,682,693</td>
</tr>
</tbody>
</table>

The above appropriation for “Rules and Regulations Division” shall be expended for the implementation of Section 4, Article 3, Chapter 29A of the Code.

### Educational

#### 22—State Department of Education

<table>
<thead>
<tr>
<th>Account No. 2770</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Teacher Education Centers—Total</td>
<td>$126,000</td>
</tr>
</tbody>
</table>

#### 23—West Virginia Board of Regents (Control)

<table>
<thead>
<tr>
<th>Account No. 2790</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$108,499,728</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>19,972,599</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>1,000,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>1,157,630</td>
</tr>
<tr>
<td>5 Bureau of Coal Research</td>
<td>1,466,607</td>
</tr>
<tr>
<td>6 National Research Center for Coal and Energy</td>
<td>1,200,000</td>
</tr>
<tr>
<td>7 Transportation Services—W.V.U.</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$134,316,964</td>
</tr>
</tbody>
</table>

#### 24—West Virginia Board of Regents

<table>
<thead>
<tr>
<th>Account No. 2800</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$567,770</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>211,050</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>7,000</td>
</tr>
<tr>
<td>4 Scholarship Program</td>
<td>3,000,000</td>
</tr>
<tr>
<td>5 Tuition Contract Programs</td>
<td>725,000</td>
</tr>
<tr>
<td>6 Unclassified (Implement S.B. 579)</td>
<td>171,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$4,681,820</td>
</tr>
</tbody>
</table>
25—West Virginia College of Osteopathic Medicine
Acct. No. 2810

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,892,274</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>514,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>52,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>135,000</td>
</tr>
<tr>
<td>5 Total</td>
<td>$3,593,274</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation at the close of the fiscal year 1980-81 is hereby re-appropriated for expenditure during the fiscal year 1981-82.

26—Marshall University—Medical School
Acct. No. 2840

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,443,790</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,010,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>56,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>116,000</td>
</tr>
<tr>
<td>5 Total</td>
<td>$3,625,790</td>
</tr>
</tbody>
</table>

27—West Virginia University—Medical School
Acct. No. 2850

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$11,739,214</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>5,714,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>428,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>268,000</td>
</tr>
<tr>
<td>5 Family Practice Residency Support Program</td>
<td>457,960</td>
</tr>
<tr>
<td>6 Intern and Residency Support Program for Community Hospitals</td>
<td>944,542</td>
</tr>
<tr>
<td>7 Total</td>
<td>$19,551,716</td>
</tr>
</tbody>
</table>

To be transferred to the West Virginia University—Medical School Fund upon the requisition of the Governor.

28—State Department of Education
Acct. No. 2860

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,839,039</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>822,280</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>1,100</td>
</tr>
</tbody>
</table>
### Ch. 1] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Equipment</td>
<td>10,400</td>
</tr>
<tr>
<td>5</td>
<td>Statewide Testing Program</td>
<td>163,606</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>66,124</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>97,482</td>
</tr>
<tr>
<td>6</td>
<td>Driver 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>468,867</td>
</tr>
<tr>
<td>9</td>
<td>Child Development Programs</td>
<td>493,428</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$4,064,720</td>
</tr>
</tbody>
</table>

The above appropriation includes the State Board of Education and their executive offices.

#### 29—State Department of Education—School Lunch Program

**Acct. No. 2870**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$167,467</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>14,383</td>
</tr>
<tr>
<td>3</td>
<td>Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>1,895,250</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$2,077,100</td>
</tr>
</tbody>
</table>

#### 30—State Board of Education—Vocational Division

**Acct. No. 2890**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$404,217</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>149,220</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>6,780</td>
</tr>
<tr>
<td>4</td>
<td>Vocational Aid</td>
<td>8,569,286</td>
</tr>
<tr>
<td>5</td>
<td>Adult Basic Education</td>
<td>575,000</td>
</tr>
<tr>
<td>6</td>
<td>Start Up Funds and Equipment for New and Existing Vocational Facilities</td>
<td>1,250,000</td>
</tr>
<tr>
<td>7</td>
<td>*Capital Outlay</td>
<td>750,000</td>
</tr>
<tr>
<td>9</td>
<td>*Total</td>
<td>$11,704,503</td>
</tr>
</tbody>
</table>

#### 31—Educational Broadcasting Authority

**Acct. No. 2910**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$81,297</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>36,152</td>
</tr>
</tbody>
</table>

*Clerk's Note:* The figure “1,750,000” on line 7 was reduced by the Governor to “1,250,000”; the figure “1,500,000” on line 8 was reduced by the Governor to “750,000”; and the total on line 9 was reduced from “12,954,503” to “11,704,503.”
3 Equipment .............................................................................. 15,000
4 Regional ETV ........................................................................ 2,247,433
5 WWVU—TV ........................................................................... 970,329
6 *Capital Outlay ....................................................................... 285,000
7 Micro Wave Interconnect System .............................................. 550,000
8 *Total ...................................................................................... $4,185,211

"Regional ETV" is for participation in the construction
and operation of Regional ETV stations by Marshall Uni-
versity, 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 northern panhandle, and such funds may be
transferred to Special Revenue Accounts for matching
County and/or Federal Funds.

32—State Board of Education—Vocational Division
Acct. No. 2940

1 Other Expenses—Total ......................................................... $493,123

Any unexpended balance remaining in this appropria-
tion at the close of the fiscal year 1980-81 is hereby re-
appropriated for expenditure during the fiscal year 1981-
82.

33—State Department of Education—State Aid to Schools
Acct. No. 2950

1 Professional Educators ................................................................. $366,292,286
2 Service Personnel ...................................................................... 129,614,778
3 Fixed Charges ........................................................................... 54,078,665
4 Transportation ........................................................................... 20,544,799
5 Administration .......................................................................... 2,564,045
6 Other Current Expense .............................................................. 32,233,960
7 Program Improvement ................................................................ 0

8 Basic Foundation Allowances .................................................... 605,328,333
9 Less Local Share ....................................................................... 76,528,174

10 Total Basic State Aid ................................................................. 528,800,359
11 Loss Reduction ......................................................................... 2,699,443

* Clerk’s Note: The figure "383,750" on line 6, account 2910, was reduced by the
Governor to "285,000"; and the total on line 8 was reduced from "4,283,961" to "4,185,211."
12 Staffing Improvement ........................................... $ 2,585,824
  Professional Educators ....................................... 1,765,866
  Service Personnel ............................................ 819,958
13 Increased Enrollment .......................................... 500,000
14 Executive Secretary (F to G) ................................ 25,669
15 Total .......................................................... $534,611,295

34—State Department of Education—
Aid for Exceptional Children

Acct No. 2960

1 Personal Services ............................................. $ 260,790
2 Current Expenses ................................................ 131,644
3 Equipment .......................................................... 7,000
4 Out-of-State Instruction ........................................ 428,000
5 Aid to Counties .................................................. 6,346,562
 County Grant Awards ........................................... 5,925,195
 Regional Ed. Service Agency
 Grants ............................................................... 212,000
 Special State Projects ........................................... 209,367

6 Total .......................................................... $ 7,173,996

7 The appropriation for “Out-of-State Instruction” may
8 be expended to provide instruction, care and maintenance
9 for educable persons who have multiple handicaps and
10 for whom the state provides no facilities.
11
12 The appropriation for “Aid to Counties” may be ex-
13 pended for the initiation, maintenance and/or improve-
14 ments of special education programs including employ-
15 ment of new professional education personnel solely
16 serving exceptional children; training of educational
17 personnel to work with exceptional children; and sup-
18 portive costs such as materials, transportation, contracted
19 services, minor renovation and other costs directly related
20 to the special education delivery process prescribed by
21 the State Board of Education.

35—Teachers’ Retirement Board

Acct. No. 2980

1 *Teachers’ Retirement Fund .................................... $ 35,800,000

* Clerk’s Note: The figure “42,264,000” on line 1 was reduced by the Governor to
“35,800,000.”
2 Supplemental Benefits for Annuitants .......... 4,820,000

3 *Total .................................................. $ 40,620,000

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

36—West Virginia Schools for the Deaf and the Blind

Acct. No. 3330

| 1 | Personal Services | $ 2,871,746 |
| 2 | Current Expenses  | 621,303     |
| 3 | Repairs and Alterations | 109,327 |
| 4 | Equipment        | 97,621      |
| 5 | Total            | $ 3,699,997 |

37—State FFA-FHA Camp and Conference Center

Acct. No. 3360

| 1 | Personal Services | $ 118,951 |
| 2 | Current Expenses  | 26,799    |
| 3 | Repairs and Alterations | 19,500 |
| 4 | Equipment        | 13,900    |
| 5 | Total            | $ 179,150 |

38—West Virginia Library Commission

Acct. No. 3500

| 1 | Personal Services | $ 924,742 |
| 2 | Current Expenses  | 190,861   |
| 3 | Repairs and Alterations | 3,500   |
| 4 | Equipment        | 9,200     |
| 5 | Per-Capita Grants | 4,872,102 |
| 6 | Books and Periodicals | 264,480 |
| 7 | Library Matching Fund (Construction) | 0 |
| 8 | Total            | $ 6,264,885 |

9 Any unexpended balance remaining in the appropriation for “Library Matching Fund (Construction)” at the

* Clerk’s Note: The total on line 3, Account No. 2980, was reduced by the Governor to $40,620,000 to reflect the reduction in line 1 of the Account.
close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

39—Department of Culture and History

Acct. No. 3510

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$993,595</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$262,688</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$25,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$35,000</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>$680,163</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$165,147</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,359</td>
</tr>
<tr>
<td>Grants and Contractural Services</td>
<td>$513,657</td>
</tr>
<tr>
<td>Department Programming Funds</td>
<td>$645,000</td>
</tr>
<tr>
<td>Outreach and Education</td>
<td>$165,250</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>$74,750</td>
</tr>
<tr>
<td>Cultural Center Programs</td>
<td>$405,000</td>
</tr>
<tr>
<td>Washington Carver Camp</td>
<td>$140,000</td>
</tr>
<tr>
<td>Grants, Fairs and Festivals</td>
<td>$656,500</td>
</tr>
<tr>
<td>Coal Exhibition</td>
<td>$150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,587,946</strong></td>
</tr>
</tbody>
</table>

The above appropriations for “Arts and Humanities Fund,” “Department Programming Funds,” “Grants, Fairs and Festivals” and “Washington Carver Camp” shall be expended only upon authorization 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 reimbursements to the Dept. of Culture and History 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 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.
Any unexpended balance remaining in the appropriation “Washington Carver Camp” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

### CORRECTIONS

#### 40—Department of Corrections
Probation and Parole

Acct. No. 3650

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members of Board of Probation and Parole</td>
<td>$75,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$45,902</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$22,242</td>
</tr>
<tr>
<td>Equipment</td>
<td>$890</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$144,034</strong></td>
</tr>
</tbody>
</table>

#### 41—Department of Corrections
Parole Services

Acct. No. 3660

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$625,564</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$122,914</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$400</td>
</tr>
<tr>
<td>Equipment</td>
<td>$500</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$749,378</strong></td>
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#### 42—Department of Corrections
Work Release Centers

Acct. No. 3670

<table>
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<tr>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$462,982</td>
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<tr>
<td>Current Expenses</td>
<td>$117,413</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$1,600</td>
</tr>
<tr>
<td>Equipment</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$582,495</strong></td>
</tr>
</tbody>
</table>
## Appropriations

### 43—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>$33,750</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$477,748</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$160,436</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$1,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$673,434</strong></td>
</tr>
</tbody>
</table>

### 44—Anthony Center

**Acct. No. 3690**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$517,783</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$142,290</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$12,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$675,073</strong></td>
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</table>

### 45—West Virginia Industrial School for Boys

**Acct. No. 3700**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,103,267</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$350,818</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$20,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,476,085</strong></td>
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### 46—Davis Center

**Acct. No. 3710**

<table>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$458,576</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$142,027</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$604,403</strong></td>
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### 47—West Virginia Industrial Home for Girls

**Acct. No. 3720**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$485,054</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$94,464</td>
</tr>
<tr>
<td>Appropriations</td>
<td>[Ch. 1</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>500</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>100,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$683,018</td>
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</table>

**48—Leckie Center**

Acct. No. 3730

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$477,543</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>140,381</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>12,000</td>
</tr>
<tr>
<td>5 Total</td>
<td>$632,924</td>
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</tbody>
</table>

**49—West Virginia State Prison for Women**

Acct. No. 3740

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$430,179</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>151,770</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>5,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>1,000</td>
</tr>
<tr>
<td>5 Total</td>
<td>$587,949</td>
</tr>
</tbody>
</table>

**50—West Virginia Penitentiary**

Acct. No. 3750

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,491,594</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,575,983</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>30,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>7,000</td>
</tr>
<tr>
<td>5 Capital Outlay</td>
<td>1,000,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$6,104,577</td>
</tr>
</tbody>
</table>

**51—Huttonsville Correctional Center**

Acct. No. 3760

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,210,977</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,176,305</td>
</tr>
</tbody>
</table>
40,000
7,000

$3,434,282

Any unexpended balance remaining in the appropriation "Boiler Conversion to Coal" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

HEALTH AND WELFARE

52—State Health Department

Acct. No. 4000

1 Personal Services $ 6,964,788
2 Current Expenses 4,225,477
3 Equipment 157,759
4 Reimbursement to Community Mental Health and Mental Retardation Centers 15,445,816
5 Reimbursement to Community Behavioral Health Programs for Social Services 1,792,925
6 Special Olympics 28,000
7 State Aid to Local Agencies 3,410,000
10 * Grants to Counties and EMS Entities 1,933,868
12 Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees 1,300,000
14 Foster Grandparents Stipends/Travel 69,300
15 Office of Chief Medical Examiner 868,550
16 Personal Services 398,555
17 Current Expenses 450,995
18 Repairs and Alterations 4,000
19 Equipment 15,000
20 Hemophiliac Assistance Program 131,500
21 Placement Program for the Developmentally Disabled 1,000,000

$37,327,983

* Clerk's Note: The word "Equipment" on line 10 was stricken by the Governor.
53—Department of Veterans Affairs
Veterans Home
Acct. No. 4010

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$651,780</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$292,246</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$200,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$225,000</td>
</tr>
</tbody>
</table>

5 Total $1,369,026

Any unexpended balance remaining in the appropriation for “Repairs and Alterations” and “Equipment” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

54—Solid Waste Disposal
Acct. No. 4020

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$86,570</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$37,325</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$500</td>
</tr>
</tbody>
</table>

4 Total $124,395

55—Department of Veterans Affairs
Acct. No. 4040

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$624,410</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$97,532</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,000</td>
</tr>
<tr>
<td>4</td>
<td>Educational opportunities for children of War Veterans</td>
<td>$14,000</td>
</tr>
<tr>
<td>5</td>
<td>In aid of Veterans Day Patriotic Exercises</td>
<td>$7,000</td>
</tr>
<tr>
<td>6</td>
<td>National Cemetery—Study and Legal Fees</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

8 Total $750,942

Moneys in item 6 above are 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.
### 56—Department of Welfare

**Acct. No. 4050**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$11,767,364</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>5,162,353</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>17,930</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>55,675</td>
</tr>
<tr>
<td>5</td>
<td>Assistance Payments</td>
<td>17,174,300</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>784,883</td>
</tr>
<tr>
<td>7</td>
<td>*Social Services</td>
<td>16,001,618</td>
</tr>
<tr>
<td>8</td>
<td>Indigent Burials</td>
<td>540,000</td>
</tr>
<tr>
<td>9</td>
<td>Emergency Assistance</td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Medical Services</td>
<td>47,411,955</td>
</tr>
<tr>
<td>11</td>
<td>Energy Assistance</td>
<td>800,000</td>
</tr>
<tr>
<td>12</td>
<td>T.R.I.P.</td>
<td>624,000</td>
</tr>
<tr>
<td>13</td>
<td><strong>Total</strong></td>
<td><strong>$101,340,078</strong></td>
</tr>
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</table>

### 57—State Commission on Aging

**Acct. No. 4060**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$95,985</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>56,523</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>300</td>
</tr>
<tr>
<td>4</td>
<td>Programs for Elderly</td>
<td>2,185,000</td>
</tr>
<tr>
<td>5</td>
<td>Senior Citizens Centers</td>
<td>200,000</td>
</tr>
<tr>
<td>6</td>
<td>Golden Mountaineer Program</td>
<td>35,000</td>
</tr>
<tr>
<td>7</td>
<td>E. A. Hawse Retirement Village—</td>
<td>25,000</td>
</tr>
<tr>
<td>8</td>
<td>Clinical Equipment</td>
<td>25,000</td>
</tr>
<tr>
<td>9</td>
<td><strong>Total</strong></td>
<td><strong>$2,597,808</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Senior Citizens Centers" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82, with the purpose of such items to be redesignated: "Senior Citizens Centers—land acquisition, construction, repairs or alterations."

### 58—Greenbrier School for Mentally Retarded Children

**Acct. No. 4140**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,020,045</td>
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</table>

---

* Clerk's Note: The figure "16,200,000" on line 7, Account No. 4050, was reduced by the Governor to "16,001,618" and the total was changed, to reflect the reduction, from "101,538,460" to "101,340,078."*
2 Current Expenses .................................................. 229,578
3 Repairs and Alterations ..................................... 35,000
4 Equipment .......................................................... 13,200

5 Total ................................................................... $ 1,297,823

59—State Health Department—Mental Hospitals

Acct. No. 4160

1 Personal Services ..................................................... $ 20,315,229
2 Current Expenses ................................................... 5,590,919
3 Repairs and Alterations ........................................ 339,626
4 Equipment .......................................................... 233,600
5 Student Nurse Affiliation Program
6 (Huntington) .......................................................... 70,894
7 Psychiatric Training Center—Student Nurses
8 (Weston) .............................................................. 204,726
9 Renovation for Certification .................................... 265,000
9a Renovation Unit 4—Huntington .............................. 100,000

10 Total ................................................................... $ 27,119,994

11 The director of health, prior to the beginning of the
12 fiscal year, shall file with the legislative auditor an ex-
13 penditure schedule for each formerly separate spending
14 unit which has been consolidated into the above account
15 and which receives a portion of the above appropriation.
16 He shall also, within fifteen days after the close of each
17 six-month period of said fiscal year, file with the legisla-
18 tive auditor an itemized report of expenditures made
19 during the preceding six-month period. Such report shall
20 include the total of expenditures made under each of line
21 items 1, 2, 3 and 4 above.

60—Colin Anderson Center

Acct. No. 4190

1 Personal Services ..................................................... $ 7,302,996
2 Current Expenses ................................................... 966,295
3 Repairs and Alterations ........................................ 147,584
4 Equipment .......................................................... 51,915

5 Total ................................................................... $ 8,468,790
61—Fairmont Emergency Hospital
Acct. No. 4250

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$798,329</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$352,082</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$10,100</td>
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<tr>
<td>Equipment</td>
<td>$24,976</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,185,487</strong></td>
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</table>

62—Welch Emergency Hospital
Acct. No. 4260

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,371,434</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$373,981</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$16,600</td>
</tr>
<tr>
<td>Equipment</td>
<td>$81,630</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,843,645</strong></td>
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63—Andrew S. Rowan Memorial Home
Acct. No. 4270

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$983,200</td>
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<tr>
<td>Current Expenses</td>
<td>$532,509</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$40,000</td>
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<tr>
<td>Equipment</td>
<td>$9,391</td>
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<td><strong>Total</strong></td>
<td><strong>$1,565,100</strong></td>
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</table>

64—Hopemont Hospital
Acct. No. 4300

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$3,971,988</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$927,518</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$43,700</td>
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<td>Equipment</td>
<td>$145,214</td>
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<td><strong>Total</strong></td>
<td><strong>$5,088,420</strong></td>
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</table>

65—Pinecrest Hospital
Acct. No. 4310

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,897,070</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,326,931</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$88,500</td>
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</table>
### 66—Denmar Hospital

**Acct. No. 4320**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,571,778</td>
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<tr>
<td>Current Expenses</td>
<td>$749,950</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$60,150</td>
</tr>
<tr>
<td>Equipment</td>
<td>$53,555</td>
</tr>
<tr>
<td>Renovation for Certification</td>
<td>$200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,635,433</strong></td>
</tr>
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</table>

### 67—State Board of Education—Rehabilitation Division

**Acct. No. 4400**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$4,101,072</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,035,262</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,423</td>
</tr>
<tr>
<td>Equipment</td>
<td>$51,616</td>
</tr>
<tr>
<td>Case Services</td>
<td>$2,302,479</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$273,542</td>
</tr>
<tr>
<td>WVU—Reimbursement</td>
<td>$50,872</td>
</tr>
<tr>
<td>*Workshop Development</td>
<td>$1,181,361</td>
</tr>
<tr>
<td>Blind Services Coordinating Unit</td>
<td>$37,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,034,627</strong></td>
</tr>
</tbody>
</table>

### BUSINESS AND INDUSTRIAL RELATIONS

68—Bureau of Labor and Department of Weights and Measures

**Acct. No. 4500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$975,670</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$255,748</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$18,400</td>
</tr>
<tr>
<td>Equipment</td>
<td>$242,880</td>
</tr>
<tr>
<td>Labor Management Advisory Council</td>
<td>$26,699</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,519,397</strong></td>
</tr>
</tbody>
</table>

* Clerk's Note: The figure "1,281,361" on line 8, Account No. 4400, was reduced by the Governor to "1,181,361" and the total was changed from "9,134,627" to "9,034,627" to reflect the reduction.
### Ch. I

**APPROPRIATIONS**

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4600</td>
<td><strong>Department of Mines</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td><em>Personal Services</em></td>
<td>$3,143,754</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,003,106</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$73,470</td>
</tr>
<tr>
<td>4</td>
<td>Miner Training, Education and Certification</td>
<td>$124,260</td>
</tr>
<tr>
<td>5</td>
<td>Board of Coal Mine Health and Safety</td>
<td>$45,000</td>
</tr>
<tr>
<td>6</td>
<td>Gas Well Certification</td>
<td>$195,048</td>
</tr>
<tr>
<td>7</td>
<td>Coal Mine Inspectors Institute of America</td>
<td>$15,000</td>
</tr>
<tr>
<td>8</td>
<td>Conference</td>
<td>$75,000</td>
</tr>
<tr>
<td>9</td>
<td><em>Development of Mine Safety Program</em></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td><strong>Total</strong></td>
<td><strong>$4,674,638</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4690</td>
<td><strong>Ohio River Basin Commission</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td><strong>Total</strong></td>
<td><strong>$21,000</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4730</td>
<td><strong>Interstate Commission on Potomac River Basin</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>West Virginia's contribution to Potomac River</td>
<td>$12,450</td>
</tr>
<tr>
<td>2</td>
<td>Basin Interstate Commission</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4740</td>
<td><strong>Ohio River Valley Water Sanitation Commission</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>West Virginia's contribution to the Ohio River</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Valley Water Sanitation Commission</td>
<td>$64,920</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4760</td>
<td><strong>West Virginia Air Pollution Control Commission</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$525,870</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$190,776</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$14,500</td>
</tr>
<tr>
<td>4</td>
<td><strong>Total</strong></td>
<td><strong>$731,146</strong></td>
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<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4790</td>
<td><strong>State Boxing Commission</strong></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td><strong>Total</strong></td>
<td><strong>$5,500</strong></td>
</tr>
</tbody>
</table>

* Clerk’s Note: Published as passed by the Legislature, notwithstanding attempted deletions and transfer of funds within the account as follows: (1) on line 9, account 4600, deleted “Development of Mine Safety Program” and “75,000” and (2) transferred “75,000” to line 1, “Personal Services”, increasing the amount to “3,218,754”.*
### 75—Department of Banking

**Acct. No. 4800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$511,576</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$263,399</td>
</tr>
<tr>
<td>Equipment</td>
<td>$8,338</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$783,313</strong></td>
</tr>
</tbody>
</table>

### 76—West Virginia State Aeronautics Commission

**Acct. No. 4850**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$63,803</td>
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<tr>
<td>Current Expenses</td>
<td>$17,485</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,500</td>
</tr>
<tr>
<td>Aerial Markers</td>
<td>$4,500</td>
</tr>
<tr>
<td>Civil Air Patrol Expenses</td>
<td>$89,000</td>
</tr>
<tr>
<td>Airport Matching</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$676,288</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Airport Matching” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during fiscal year 1981-82.

### 77—West Virginia Nonintoxicating Beer Commissioner

**Acct. No. 4900**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$305,777</td>
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<tr>
<td>Current Expenses</td>
<td>$80,059</td>
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<tr>
<td>Equipment</td>
<td>$300</td>
</tr>
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<td><strong>Total</strong></td>
<td><strong>$386,136</strong></td>
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</table>

### 78—West Virginia Racing Commission

**Acct. No. 4950**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$746,633</td>
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<tr>
<td>Current Expenses</td>
<td>$83,750</td>
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<tr>
<td>Equipment</td>
<td>$5,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$835,383</strong></td>
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</table>
### Ch. 1] Appropriations

#### AGRICULTURE

79—Department of Agriculture

Acct. No. 5100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>$39,000</td>
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<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$1,858,367</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$793,002</td>
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<td>4</td>
<td>Equipment</td>
<td>$32,800</td>
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<tr>
<td>5</td>
<td>Multiflora Rose Eradication Program</td>
<td>$165,000</td>
</tr>
<tr>
<td>6</td>
<td>Eradication of Plant and Pest Diseases</td>
<td>$25,000</td>
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</table>

Total $2,913,169

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

80—Farm Management Commission

Acct. No. 5110

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Current Expenses</td>
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<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$215,000</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$167,323</td>
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<tr>
<td>5</td>
<td>Livestock Purchase</td>
<td>$400,000</td>
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<tr>
<td>6</td>
<td>Storage Shed-Weston</td>
<td>$20,000</td>
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</table>

Total $2,601,631

81—Department of Agriculture—Soil Conservation Committee

Acct. No. 5120

<table>
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<tr>
<th>Item</th>
<th>Description</th>
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</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$319,083</td>
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<td>2</td>
<td>Current Expenses</td>
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</tr>
<tr>
<td>3</td>
<td>Watershed Program</td>
<td>$150,000</td>
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</table>

Total $569,083

Any unexpended balance remaining in the appropriation for “Watershed Program,” “Mud River Flood Control Project,” and “Channelization of Kelley’s Creek,” here-
in after redesignated as “Stream Channelization,” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

82—Department of Agriculture—Division of Rural Resources (Matching Fund)

Acct. No. 5130

1 Personal Services ........................................ $ 727,978
2 Current Expenses ............................................. 165,787
3 Equipment .................................................................. 39,200
4 Total................................................................. $ 932,965

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.

83—Department of Agriculture—Meat Inspection

Acct. No. 5140

1 Personal Services ........................................ $ 367,068
2 Current Expenses ............................................. 144,737
3 Total................................................................. $ 511,805

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.

84—Department of Agriculture—Agricultural Awards

Acct. No. 5150

1 Agriculture Awards ........................................ $ 70,000
2 Fairs and Festivals ............................................. 148,450
3 Total................................................................. $ 218,450

CONSERVATION AND DEVELOPMENT

85—Geological and Economic Survey

Acct. No. 5200

1 Personal Services ........................................ $ 1,301,574
2 Current Expenses ............................................. 331,333
3 Repairs and Alterations ........................................ 73,119
4 Equipment .......................................................... 73,540
### Ch. 1 j  APPROPRIATIONS 1201

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Special Studies</td>
<td>60,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,839,566</td>
</tr>
</tbody>
</table>

#### 86—Department of Natural Resources

**Acct. No. 5650**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$9,382,988</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>2,270,337</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>173,820</td>
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<td>4</td>
<td>Equipment</td>
<td>119,771</td>
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<tr>
<td>5</td>
<td>Fire Prevention Control</td>
<td>701,270</td>
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<tr>
<td></td>
<td>Personal Services</td>
<td>638,880</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>62,390</td>
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<tr>
<td>6</td>
<td>Water Resources Board and Reclamation</td>
<td>40,000</td>
</tr>
<tr>
<td>7</td>
<td>Board of Review</td>
<td>1,179,050</td>
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<tr>
<td>8</td>
<td>Debt Service</td>
<td>1,179,050</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$13,867,236</td>
</tr>
</tbody>
</table>


Any or all funds appropriated for “Fire Prevention Control” may be transferred to Special Revenue Fund to match and aid Federal Funds.

---

* Clerk's Note: The figure "200,000" on line 5, Account No. 5200, was reduced by the Governor to "60,000" and the total on line 6 was changed from "1,979,566" to "1,839,566."

* Clerk's Note: The figure "9,632,988" on line 1, Account No. 5650, was reduced by the Governor to "9,382,988" and the total was changed from "14,117,236" to "13,867,236" to reflect the reduction.
87—Public Land Corporation

Acct. No. 5660

Any unexpended balance remaining in the appropriations for "Public Land Corporation," "Blennerhassett Island," and "National Track and Field Hall of Fame" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

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.

88—Water Development Authority

Acct. No. 5670

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$153,230</td>
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<tr>
<td>Current Expenses</td>
<td>$60,177</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Ravencliff-McGraw-Saulsville Public Service District</td>
<td>$250,000</td>
</tr>
<tr>
<td>Town of Elizabeth Water System</td>
<td>$238,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,701,407</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Capital Outlay" and "Phase III Hardship Grants" at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82.

89—West Virginia Railroad Maintenance Authority

Acct. No. 5690

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$673,131</td>
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<tr>
<td>Current Expenses</td>
<td>57,630</td>
</tr>
</tbody>
</table>
Ch. I]

APPROPRIATIONS

3 So. Branch Valley Railroad—
  Track and Bridge Renovation ........................................ 500,000

4 Total ............................................................................. $ 1,230,761

The moneys appropriated in the item in this account for
“South Branch Valley Railroad” purposes may be trans-
ferred to special revenue account No. 8344 for expendi-
ture and disbursement therefrom.

PROTECTION

90—Department of Public Safety

Acct. No. 5700

1 Personal Services ...................................................... $ 13,926,004
2 Current Expenses .......................................................... 5,740,931
3 Repairs and Alterations ................................................. 244,000
4 Equipment .................................................................. 1,882,440
5 Emergency Fund ............................................................ 10,000

6 Total .............................................................................. $ 21,803,375

91—Adjutant General—State Militia

Acct. No. 5800

1 Personal Services ...................................................... $ 236,382
2 Current Expenses .......................................................... 485,679
3 Repairs and Alterations ................................................. 39,000
4 Equipment .................................................................. 4,000
5 Compensation of Commanding Officers, Cleri-
cal Allowances and Uniform Allowances ......................... 102,035
6 Property Maintenance .................................................... 879,627
7 State Armory Board ..................................................... 2,179,025
8 College Education Fund .................................................. 135,733

10 Total .............................................................................. $ 4,061,681

MISCELLANEOUS BOARDS AND COMMISSIONS

92—West Virginia Civil Service System

Acct. No. 5840

1 Personal Services ...................................................... $ 808,177
2 Current Expenses .......................................................... 283,886
Equipment ................................................. 4,000

Total...........................................................$ 1,096,063

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.

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

93—West Virginia State Board of Land Surveyors

Acct. No. 5850

1 To pay the per diem of members and
2 other general expenses ................................. $ 16,000
3 From Collections ........................................... 16,000

94—State Board of Professional Foresters

Acct. No. 5860

1 To pay the per diem of members and
2 other general expenses ................................. $ 1,400
3 From Collections ........................................... 1,400

95—West Virginia Board of Examiners for Practical Nurses

Acct. No. 5870

1 To pay the per diem of members and
2 other general expenses ................................. $ 87,500
3 From Collections ........................................... 87,500
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96—State Board of Chiropractic Examiners

Acct. No. 5880

1 To pay the per diem of members and  
2 other general expenses .................. $ 6,500  
3 From Collections .......................... 6,500

97—State Board of Pharmacy

Acct. No. 5900

1 To pay the per diem of members and  
2 other general expenses .................. $ 75,000  
3 From Collections .......................... 75,000

98—State Board of Osteopathy

Acct. No. 5910

1 To pay the per diem of members and  
2 other general expenses .................. $ 8,480  
3 From Collections .......................... 8,489

99—State Board of Embalmers and Funeral Directors

Acct. No. 5930

1 To pay the per diem of members and  
2 other general expenses .................. $ 45,065  
3 From Collections .......................... 45,065

100—State Board of Registration for Professional Engineers

Acct. No. 5940

1 To pay the per diem of members and  
2 other general expenses .................. $ 128,000  
3 From Collections .......................... 128,000

101—State Board of Architects

Acct. No. 5950

1 To pay the per diem of members and  
2 other general expenses .................. $ 16,000  
3 From Collections .......................... 16,000
102—State Veterinary Board
Acct. No. 5960

1 To pay the per diem of members and
2 other general expenses .............................. $ 6,600
3 From Collections ...................................... 6,600

103—Human Rights Commission
Acct. No. 5980

1 Personal Services .................................. $ 325,951
2 Current Expenses .................................. 127,106
3 Equipment ........................................ 3,599
4 Total .............................................. $ 456,656

104—West Virginia State Board of Sanitarians
Acct. No. 5990

1 To pay the per diem of members and
2 other general expenses .............................. $ 1,900
3 From Collections .................................... 1,900

105—Women’s Commission
Acct. No. 6000

1 Personal Services .................................. $ 32,846
2 Current Expenses .................................. 13,794
3 Total .............................................. $ 46,640

106—West Virginia Public Employees Retirement Board
Acct. No. 6140

1 Employers Accumulation Fund ...................... $ 10,000,000
2 Expense Fund ...................................... 140,625
3 Supplemental Benefits for Annuitants .......... 1,850,000
4 Total .............................................. $ 11,990,625

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, De-
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.

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

107—West Virginia Public Employees Insurance Board

Acct. No. 6150

1 Expense Fund ............................................. $ 237,500
2 Public Employees Health Insurance—
3 *State Contributions ..................................... 48,500,000
4 *Total ..................................................... $ 48,737,500

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 Commission 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 Fund in excess of specific appropriations.

108—Insurance Commissioner

Acct. No. 6160

1 Personal Services ................................... $ 522,155
2 Current Expenses ....................................... 148,898

* Clerk's Note: The figure "50,000,000" on line 3 was reduced by the Governor to "48,500,000" and the total was changed from "50,237,500" to "48,737,500" to reflect the reduction.
3 Equipment ........................................................................ 15,000

4 Total............................................................................. $686,053

109—State Fire Commission

Acct. No. 6170

1 Personal Services ......................................................... $540,473
2 Current Expenses .......................................................... 203,243
3 Repairs and Alterations ................................................. 3,048
4 Equipment .................................................................... 15,470

5 Total............................................................................. $762,234

110—State Department of Highways

Acct. No. 6410

1 Unclassified—Total ....................................................... $12,000,000
2 Any or all of the above appropriations may be transferred to the State Road Fund for distribution.

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-two.

111—State Department of Highways

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1 Maintenance Expressway, Trunkline and Feeder .................. $52,800,000
2 Maintenance, State Local Services ................................... 37,985,000
3 Inventory Revolving ....................................................... 1,650,000
4 Equipment Revolving .................................................... 4,400,000
5 General Operations ....................................................... 16,000,000
6 Debt Service .................................................................. 87,900,000
7 Interstate Construction .................................................. 175,000,000
8 Other Federal Aid Programs .......................................... 105,000,000
9 Appalachian Program ................................................... 45,000,000
11 Nonfederal Aid Construction .................................. 19,112,000
12 Total ...................................................................... $544,847,000

The above appropriation 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.

Included in the above appropriations on lines 8, 9, 10 and 11 there is an amount of $75,000,000 of which expenditure is contingent upon the passage of S. J. R. No. 12, Regular Session of the Legislature, 1981, and said resolution's adoption and ratification by the voters of West Virginia and authorization provided for by the Legislature.

112—Department of Motor Vehicles
Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,150,838</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>3,144,668</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>41,000</td>
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<tr>
<td>4</td>
<td>Purchase of License Plates</td>
<td>524,150</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
<td>143,560</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching</td>
<td>205,454</td>
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<tr>
<td>7</td>
<td>Public Employees Health Insurance</td>
<td>144,555</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$6,354,225</td>
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</tbody>
</table>
113—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>$42,622</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$16,669</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$59,291</td>
</tr>
</tbody>
</table>

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

114—Treasurer's Office—Abandoned and Unclaimed Property
Acct. No. 8000

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>
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<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$36,749</td>
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<tr>
<td>3</td>
<td>Total</td>
<td>$88,861</td>
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</tbody>
</table>

115—Real Estate Commission
Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$113,592</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$84,406</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$204,998</td>
</tr>
</tbody>
</table>

5 The total amount of this appropriation shall be paid out of collections of license fees as provided by law.
116—West Virginia Racing Commission
Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses ........................................... $ 5,000
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this account except for hospitalization medical care and/or funeral expenses for persons contributing to this fund.

117—Auditor's Office—Land Department Operating Fund
Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

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

118—Department of Finance and Administration—Division of Purchasing—Revolving Fund
Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................... $ 741,588
2 Current Expenses ........................................... 408,842
3 Equipment .............................................................. 28,000
4 Social Security Matching ................................... 52,924
5 Public Employees Retirement Matching .............. 70,450
6 Public Employees Health Insurance .................... 61,656

7 Total ........................................................................... $ 1,363,460

8 The total amount of this appropriation shall be paid from Special Revenue Fund as provided by Chapter 5A, Article 2 of the Code of West Virginia.
9 The above appropriation includes salaries and operating expenses.
There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.

119—Department of Finance and Administration—

Information System Services Division Fund

Acct. No. 8151

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$3,071,058</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,950,424</td>
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<tr>
<td>Equipment</td>
<td>$67,500</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$190,741</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$252,430</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$188,304</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,720,457</strong></td>
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</table>

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.

120—Department of Agriculture

Acct. No. 8180

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Current Expenses</td>
<td>$18,060</td>
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<tr>
<td>Social Security Matching</td>
<td>$25,594</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$35,565</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$26,856</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$489,799</strong></td>
</tr>
</tbody>
</table>

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.
### Ch. 1] APPOPRIATIONS 1213

121—*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>1  Personal Services</td>
<td>$116,854</td>
</tr>
<tr>
<td>2  Current Expenses</td>
<td>$84,065</td>
</tr>
<tr>
<td>3  Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td>4  Total</td>
<td>$201,919</td>
</tr>
</tbody>
</table>

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

122—*Public Service Commission*

Acct. No. 8280

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Salaries of Commissioners</td>
<td>$77,900</td>
</tr>
<tr>
<td>2  Other Personal Services</td>
<td>$2,953,150</td>
</tr>
<tr>
<td>3  Current Expenses</td>
<td>$1,013,311</td>
</tr>
<tr>
<td>4  Equipment</td>
<td>$200,000</td>
</tr>
<tr>
<td>5  Social Security Matching</td>
<td>$197,712</td>
</tr>
<tr>
<td>6  Public Employees Retirement Matching</td>
<td>$287,635</td>
</tr>
<tr>
<td>7  Public Employees Health Insurance</td>
<td>$203,856</td>
</tr>
<tr>
<td>8  Consumer Advocate</td>
<td>$302,500</td>
</tr>
<tr>
<td>9  Headquarters Building Development</td>
<td>$4,877,000</td>
</tr>
<tr>
<td>10 Total</td>
<td>$10,113,064</td>
</tr>
</tbody>
</table>

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

12. Out of the above appropriation the amount designated Headquarters Building Development shall be used for the establishment of a headquarters building pursuant to Chapter 24, Article 7 of the Code of West Virginia.
### 123—Public Service Commission—Gas Pipeline Division

**Acct. No. 8285**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Current Expenses</td>
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</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,500</td>
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<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$11,300</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$16,083</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$8,928</td>
</tr>
<tr>
<td>7</td>
<td>Headquarters Building Development</td>
<td>$233,000</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>Total</strong></td>
<td><strong>$522,493</strong></td>
</tr>
</tbody>
</table>

9. 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 pipeline companies.

14. Out of the above appropriation the amount designated Headquarters Building Development shall be used for the establishment of a headquarters building pursuant to Chapter 24, Article 7 of the Code of West Virginia.

### 124—Public Service Commission—Motor Carrier Division

**Acct. No. 8290**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$943,874</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$380,820</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$8,250</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$63,000</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$89,668</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$65,472</td>
</tr>
<tr>
<td>7</td>
<td>Headquarters Building Development</td>
<td>$1,890,000</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>Total</strong></td>
<td><strong>$3,441,084</strong></td>
</tr>
</tbody>
</table>

9. 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.

Out of the above appropriation the amount designated
Headquarters Building Development shall be used for
the establishment of a headquarters building pursuant to
Chapter 24, Article 7 of the Code of West Virginia.

125—Department of Natural Resources
Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$3,194,226</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$1,804,699</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$86,720</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$248,883</td>
</tr>
<tr>
<td>5. Land Purchase and Buildings</td>
<td>$537,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,871,528</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 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 1980-81 and available for capital im-
provements and land purchase purposes are hereby ap-
propriated for expenditure in fiscal year 1981-82 all in
accordance with Chapter 20, Article 2, Section 34, Code
of West Virginia.

126—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. Personal Services</td>
<td>$415,304</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$172,075</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$8,700</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$21,000</td>
</tr>
<tr>
<td>5. Social Security Matching</td>
<td>$3,815</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
</tr>
<tr>
<td>8</td>
<td>The total amount of this appropriation shall be paid</td>
</tr>
<tr>
<td>9</td>
<td>from Special Revenue Fund out of fees collected for inspection stickers as</td>
</tr>
<tr>
<td>10</td>
<td>provided by law.</td>
</tr>
</tbody>
</table>

127—Board of Regents—West Virginia University
Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$ 538,718</td>
</tr>
<tr>
<td>2</td>
<td>The total amount of this appropriation shall be paid</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>from the non-revolving Capital Improvement Fund created</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>by the 1959 Legislature, as amended.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Any unexpended balances remaining in the appropriations for</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>&quot;Creative Arts&quot; at the close of the fiscal year 1980-81 are</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>hereby reappropriated for expenditure during fiscal year</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>1981-82.</td>
<td></td>
</tr>
</tbody>
</table>

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

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service and Reserve</td>
<td>$ 2,663,135</td>
</tr>
<tr>
<td>2</td>
<td>West Virginia University Campus Development (Renovation to</td>
<td>2,250,000</td>
</tr>
<tr>
<td>3</td>
<td>Clark Hall—Phase II)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Capital Building Repairs &amp; Alterations (supplements operating</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>budgets at colleges and universities)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>2,200,000</td>
</tr>
<tr>
<td>7</td>
<td>Glenville State College Campus Development</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>(Upgrade fire and life safety systems, repair roofs, and</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>make general grounds improvements)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>300,000</td>
</tr>
<tr>
<td>11</td>
<td>Marshall University Land Purchase</td>
<td>200,000</td>
</tr>
<tr>
<td>12</td>
<td>Shepherd College—Creative Arts Center</td>
<td>100,000</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1971 Legislature. Projects are to be paid on a cash basis and made available from the date of passage. Items and projects in this appropriation are to be started as funds become available and then only in the listed order of priority.

Any unexpended balances remaining in prior years and 1980-81 appropriations are hereby reappropriated for expenditure during fiscal year 1981-82.

129—Board of Regents—Special Capital Improvement Fund
Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service .................................. $ 1,675,200

2 The total amount of this appropriation shall be paid from the non-revolving Capital Improvement Fund created by the 1959 Legislature, as amended.

130—Board of Regents—State System Registration Fee Revenue Bond Construction Fund
Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and 1980-81 appropriations are hereby reappropriated for expenditure during the fiscal year 1981-82.

131—Board of Regents—State System Tuition Fee Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)
Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve ........................................... $ 4,449,806
2 Miscellaneous Campus Development Projects 1,000,000
3 West Virginia Northern Community College
4 Campus Development ............................... 500,000
5 (Development of College Square—Wheeling)
West Liberty State College Campus
Development .................................................. 200,000

(Upgrade Pool Filter System and Correct Fire
Safety Violations)

Marshall University Campus Development ...... 1,250,000

(Renovation to Science Building, Equipment
Purchase, and Land Acquisition)

West Virginia State College Campus
Development .................................................. 1,275,000

(Renovation and Improvements to
Utility Distribution System)

Concord College Campus Development ...... 350,000

Fairmont State College Campus Development 350,000

(Renovation and Improvement of Recreational
Facilities)

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

Any unexpended balances remaining in prior years
and in the 1980-81 appropriations are hereby reappropri-
ated for expenditure in fiscal year 1981-82.

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

Acct. No. 8860
TO BE PAID FROM SPECIAL REVENUE FUND

Any unexpended balances remaining in prior years and
1980-81 appropriations are hereby reappropriated for ex-
penditure during fiscal year 1981-82.

133—Workmen's Compensation Commission

Acct. No. 9000
TO BE PAID FROM WORKMEN’S COMPENSATION FUND

1 Personal Services ........................................ $ 4,698,041
2 Current Expenses ........................................ 3,288,120
3 Equipment .................................................... 182,382
4 Social Security Matching .................................. 303,846
5 Public Employees Retirement Matching ............. 434,944
6 Public Employees Health Insurance .................... 360,033
### Ch. 1] Appropriations

<table>
<thead>
<tr>
<th>7</th>
<th>*Unclassified</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>*Total</td>
<td>$9,267,366</td>
</tr>
</tbody>
</table>

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 Workers' Compensation Fund. This sum shall be transferred to the Board of Insurance.

#### 134—West Virginia Alcohol Beverage Control Commissioner

**Acct. No. 9270**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>1</th>
<th>Salary of Commissioner</th>
<th>$33,750</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>9,348,238</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>4,887,458</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>50,500</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>212,000</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching</td>
<td>626,248</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Retirement Matching</td>
<td>891,289</td>
</tr>
<tr>
<td>8</td>
<td>Public Employees Health Insurance</td>
<td>870,108</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$16,919,591</td>
</tr>
</tbody>
</table>

The total amounts 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 equipment; 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.

#### 135—West Virginia University—Medical School

**Acct. No. 9280**

**TO BE PAID FROM MEDICAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$41,759,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>26,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>1,645,000</td>
</tr>
</tbody>
</table>

* Clerk's Note: The figure "887,558" on line 7, Account No. 9000, was reduced by the Governor to "0" and the total was changed from "10,154,924" to "9,267,366" to reflect the reduction.
Sec. 3. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1980-81 and to remain in effect until June 30, 1982, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled House Bill Nos. 1541 and 1542, Legislature, Regular Session, 1981, total general revenue funds of $286,878; state road funds of $310,574; and special revenue funds of $89,309 for payment of claims against the state.

Sec. 4. Reappropriations.—Any unexpended balances of Items V, VI, and IX, in the appropriations made by and under the authority of Sec. 4, Title II of the 1972 Budget Act, and amended under Sec. 4, Title II of the 1977 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1981-82.

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

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

Sec. 5. Supplemental and deficiency appropriation.—From the Revenue Sharing Trust Fund, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-one to supplement the 1980-81 appropriation, and to be available for expenditure upon date of passage.
Ch. 1] Appropriations 1221

136—Revenue Sharing Trust Fund
Governor's Office—Civil Contingent Fund
Acct. No. 9721

1 *Unclassified .............................................$ 914,000
2 *Benwood Flood Wall .................................. 400,000
3 County Boards of Education ......................... 3,000,000

If the actions of the chief executive of the state in placing reserves on a portion of the funds available for expenditure in the last quarter of fiscal year 1980-81 are nullified by the Supreme Court of Appeals prior to the distribution or expenditure of all or any part of the appropriation in item 3, above, designated "County Boards of Education," then no such distributions or expenditures under authority of such item is to occur.

Sec. 6. Appropriations from revenue sharing trust fund.—The following items are hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1981-82.

137—Revenue Sharing Trust Fund
Department of Highways
Acct. No. 9705

1 Maintenance, State Local Service .................. $ 23,500,000

138—Revenue Sharing Trust Fund
Department of Natural Resources
Acct. No. 9725

1 Pipestem—Convention Meeting Room ...............$ 300,000
2 Kanawha State Forest—Improvements ............. 95,000

139—Revenue Sharing Trust Fund
Department of Agriculture
Acct. No. 9771

1 Administration Building ................................$ 1,000,000
2 Animal Health Laboratory ............................. 175,000

Sec. 7. Appropriations from countercyclical fiscal assistance trust fund.—Moneys received by the State of

* Clerk's Note: Published as passed by the Legislature, notwithstanding attempted deletions and transfer of funds within the account, as follows: (1) on line 2, account 9721, deleted "Benwood Flood Wall" and (2) transferred "400,000" to line 1, "Unclassified," increasing the amount to "1,314,000".
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 Anti-recession 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-two, 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. 8. Reappropriations—Revenue Sharing Trust Fund.—Any unexpended balances to the appropriations made by and under Sec. 8, Title II, of the 1973 Budget Act and Supplementary Acts to Chapter 10, acts of the Legislature, Regular Session 1973, with the exception of: Acct. No.; under Sec. 5, Title II, of the 1974 Budget Act and Supplementary Acts to Chapter Two, acts of the Legislature, 2nd Extraordinary Session 1974, with the exception of the following: Acct. Nos. 9700-06, 9725-09, 9725-14, 9771-06, 9771-08 and 9772-12; under Sec. 7, Title II, acts of the Legislature, Regular Session 1976 and Supplementary Acts to Chapter 7, acts of the Legislature, Regular Session 1976, with the exception of the following: Acct. Nos. 9725-41, 9771-09, 9773-05 and 9775-05; under Sec. 5, Title II, of the 1977 Budget Act; with the exception of: Acct. No. 9733-05; under Sec. 5, Title II, of the 1978 Budget Act, with the exception of the following: Acct. No. 9725-50; under Sec. 5, Title II, of the 1979 Budget Act, with the exception of the following: Acct. Nos. 9705-13, and; under Sec. 5, Title II, of the 1980 Budget Act with the exception of the following: Acct. Nos. 9721-11, 9740-08, 9745-28, 9750-07, 9750-08, 9750-09, 9771-12, 9771-13 and 9777-06.

*Clerk's Note: The following Account Nos. were stricken by the Governor: line 6, 9725-05; line 9, 9725-07; line 10, 9725-18, 9725-34, 9725-48; line 14, 9725-36, 9725-38; line 15, 9825-40, 9725-42; line 19, 9725-51; and line 21, 9725-52, 9725-53, 9725-54 and 9725-55.
Sec. 9. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-two, 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, Article 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. 10. 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-two, 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-two, 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. 11. 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. 12. Appropriations for refunding erroneous payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it 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. 13. Sinking fund deficiencies.—There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage 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 obligations 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. 14. Appropriations to pay costs of publication of
delinquent corporations.—There is hereby appropriat-
ed out of the state fund, General Revenue, out of funds
not otherwise appropriated, to be paid upon requisition
of the Auditor and/or the Governor, as the case may be,
a sum sufficient to pay the cost of publication of delin-
quent 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
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is appro-
piated for expenditure in accordance with Chapter 18,
Article 9A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional.—The expendi-
ture of the appropriations made by this act, except those
appropriations made to the legislative and judicial
branches of the state government, are conditioned upon
the compliance by the spending unit with the require-
ments 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
Legislature, it is the intent of this act that reappropria-
tion shall be to the succeeding or later spending unit
created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is
declared unconstitutional by a court of competent juris-
diction, its decision shall not affect any portion of this
act which remains, but the remaining portion shall be
in full force and effect as if the portion declared un-
constitutional had never been a part of the act.

CHAPTER 2
(H. B. 105—By Mr. Speaker, Mr. See)

Passed May 8, 1981; in effect from passage. Approved by the Governor.
thirteen, chapter sixteen of said code; to amend and reenact section thirteen, article thirteen-a of said chapter sixteen; to amend and reenact section twenty-five, article eleven, chapter eighteen of said code; and to amend and reenact section six, article twenty-four of said chapter eighteen, all relating to the issuance of, rate of interest and permissible rate of return on, revenue bonds of agencies, instrumentalities, municipalities and political subdivisions of the state; relating to the issuance by the state building commission of West Virginia of state building revenue bonds; the form of, requirements for and procedure for issuance of such revenue bonds; the issuance by said state building commission of temporary bonds and the acceptance by said state building commission of federal or other funds, grants, gifts or contributions; increasing the eight percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of such revenue bonds without coupons and the designation of a co-paying agent within or without the state and increasing the eight percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the construction of waterworks, water mains, sewer lines and sewage disposal plants; the improvement of streets, sidewalks and alleys and the laying of sewers by county commissions; assessments for the costs of improving streets, sidewalks and alleys and laying sewers; the issuance by county commissions of certificates payable for the amounts of such assessments and the interest thereon and increasing the eight percent ceiling on the stated rates of interest on such assessments and such certificates to twelve percent; the issuance by county commissions of revenue bonds for courthouses, hospitals, other public buildings, jails or regional correctional centers; limiting the maximum stated rate of interest on such revenue bonds to twelve percent and maximum net return to the purchaser of such revenue bonds to thirteen percent and authorizing the designation of a trust company as copaying agent and of a copaying agent within or without the state; the acquisition, operation and financing by county commissions of public hospitals, clinics, long-term care facilities and other related facilities and the issuance by such county commissions of revenue bonds therefor and increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve
percent and the eleven percent ceiling on the net interest cost of such revenue bonds to thirteen percent; the enactment by the governing body of a municipality of an ordinance ordering the construction or acquisition of municipal public works and directing the issuance of revenue bonds; the publication of an abstract and notice of such ordinance and a public hearing on such ordinance; substituting "county commission" for "county court"; requiring that the public hearing on said ordinance be held not prior to the last publication of said abstract and notice; revenue bonds issued by a municipality for municipal public works; the interest rate, life, redemption, method of payment, form, denominations and other terms of such revenue bonds; the issuance by said municipality of additional revenue bonds and of interim certificates prior to the preparation of definitive revenue bonds; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of bonds registered as to principal and interest and increasing the ten percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the issuance by municipalities of bonds in anticipation of special assessments to be made upon property abutting improved streets, alleys, public ways or easements or sewer rights-of-way or easements, increasing the ten percent ceiling on the stated rate of interest on such bonds to twelve percent and authorizing interest payment dates other than annual; an estimate of the cost of acquiring or constructing a waterworks system or constructing additions, betterments or improvements to any waterworks or electric power system by a municipality; the enactment by such municipality of an ordinance providing for the issuance of revenue bonds with respect to such acquisition or construction, certain terms of such revenue bonds and the rates or charges for the services from such waterworks or electric power system; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent and authorizing the sale of such revenue bonds and interest payment dates other than semiannual; the publication of an abstract and notice of an ordinance authorizing the issuance of revenue bonds by a municipality for the acquisition or construction of a waterworks system or the construction of addi-
tions, betterments or improvements to any waterworks or electric power system and a public hearing on such ordinance and changing the date of such public hearing from not less than ten days subsequent to the date of the last publication of such abstract and notice to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the amount, negotiability and execution of revenue bonds issued by a municipality to acquire or construct a waterworks system or to construct additions, betterments or improvements to any waterworks or electric power system and increasing the ten percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the acceptance of grants and procurement of loans or temporary advances by a municipality from, and contracts and agreements with, the United States or any federal or public agency or department of the United States or any private agency, corporation or individual for the purpose of paying part or all of the cost of acquisition or construction of waterworks systems and of additions, betterments or improvements to existing waterworks systems or electric power systems and authorizing the acceptance of loans, the issuance of notes or other negotiable instruments to evidence such loans or temporary advances; the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes and from any authorized agency of the state and repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; the publication of an abstract and notice of an ordinance authorizing the issuance of revenue bonds by a municipality for the acquisition or construction of a waterworks or sewerage system to be included in a combined waterworks or sewerage system, or a combined waterworks and sewerage system, or any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage
system, or both, and a public hearing on such ordinance and changing the date of such public hearing from not less than ten days subsequent to the date of the last publication of such abstract and notice to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the amount, negotiability, execution and certain other terms of revenue bonds issued by a municipality for the purpose of acquiring or constructing a waterworks or sewerage system to be included in a combined waterworks and sewerage system, or a combined waterworks and sewerage system, or constructing any extensions, additions, betterments or improvements to either the waterworks or sewerage system of said combined waterworks and sewerage system, or both, and the refunding of outstanding revenue bonds of a waterworks or a sewerage system to be included in a combined waterworks and sewerage system by the sale or exchange therefor of revenue bonds of such combined waterworks and sewerage system, increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semiannual, increasing the ten percent ceiling on the interest cost to the municipality of the proceeds of such revenue bonds to thirteen percent and removing the requirement that revenue bonds issued for refunding purposes be sold at not less than par and accrued interest; the acceptance of grants and procurement of loans or temporary advances by municipality from, and contracts and agreements with, the United States or any federal or public agency or department of the United States or any private agency, corporation or individual, for the purpose of paying part or all of the cost of acquisition or construction of combined waterworks and sewerage systems and of additions, betterments and improvements thereto and authorizing the acceptance of loans, the issuance of notes or other negotiable instruments to evidence such loans or temporary advances, the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes and from any authorized agency of the state and repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said combined waterworks and sewerage system or grants to the municipality from any agency
of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; adoption by the governing body of a political division of a resolution authorizing the issuance and fixing the terms of general obligation bonds; authorizing multiple interest rates on such general obligation bonds and removing the ten percent ceiling on the stated rate of interest on such general obligation bonds; the advertisement and sale of general obligation bonds by a political division and the prior offer of such bonds for purchase by any of the governmental agencies of the state, substituting "West Virginia municipal bond commission" for "state sinking fund commission" and increasing the time period for private sale of such general obligation bonds from sixty to one hundred twenty days after the date advertised for the reception of bids; the issuance by county commissions of revenue bonds to defray the cost or any part thereof of acquiring an airport or an addition, extension or improvement thereto or to be delivered in exchange for an airport or private facility for the landing and taking off of airplanes, substituting "county commission" for "county court" and increasing the six percent ceiling on the stated rate of interest on such revenue bonds to twelve percent and the six percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the issuance by public bodies of refunding bonds to refund all or any part of their outstanding revenue bonds and authorizing the issuance of such refunding bonds as part of a series of revenue bonds issued for the purpose, in addition to such refunding, or financing the acquisition or construction of improvements, betterments, extensions or replacements to the particular enterprise; the terms, form and execution of refunding bonds issued by a public body for the purpose of refunding all or any part of its outstanding revenue bonds and removing the requirement that such refunding bonds mature not later than the date of final maturity of the bonds to be refunded; the publication of an ordinance authorizing the issuance by a municipality or sanitary district of revenue bonds for the acquisition or construction of works for the collection and/or treatment, purification and disposal of sewage or extensions, improvements or betterments thereto,
together with a notice regarding such ordinance, and a public hearing on such ordinance, authorizing publication of an abstract of such ordinance, determined by the governing body of such municipality or sanitary district to contain sufficient information as to give notice of the contents of such ordinance and changing the date of such publication from not less than ten days subsequent to the date of the last such publication to not less than ten days subsequent to the date of the first publication and not prior to the date of the last publication of such abstract and notice; the interest on and the redemption, form, negotiability exemption from taxation, registration, execution, sale and other terms of revenue bonds issued by a municipality or a sanitary district to finance the cost of acquisition or construction of works for the collection and/or treatment, purification and disposal of sewage or any extensions, improvements or betterments thereto, and the statement required on the face of such revenue bonds regarding payment solely from the special fund provided from the net revenues of such works, the disposition of surplus proceeds of such revenue bonds and the issuance by said municipality or sanitary district of additional revenue bonds and temporary bonds; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semiannual and the issuance of bonds registered as to principal and interest and increasing the eleven percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the contract of a municipality operating or constructing or acquiring a sewage collecting system and/or sewage disposal plant with other municipal corporations or political subdivisions of the state for the service of such works, the powers of the municipal corporations or political subdivisions with which such municipality contracts as to rates for the service rendered by such works and the construction of the necessary intercepting sewers and increasing the maximum term of such contract from fifteen to forty years; the acceptance of grants and procurement of loans or temporary advances by a municipality or sanitary district from, and contracts and agreements with, any authorized agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual,
for the purpose of paying part or all of the costs of acquisition or construction of sewage works and the construction of betterments and improvements thereto; authorizing the acceptance of loans and the acceptance and procurement of such loans, grants or temporary advances for other authorized purposes; providing that the notes or other negotiable instruments evidencing such loans or temporary advances shall be subject to the privileges set forth with respect to revenue bonds of such sewerage works and rephrasing the authorization for repayment of such loans or temporary advances, including the interest thereon, from the proceeds of revenue bonds, the revenues of said sewage works or grants to the municipality or sanitary district from any agency of the state or from the United States or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment; the issuance by public service districts of revenue bonds for constructing or acquiring any public service properties or improvements and extensions thereto and for reimbursing or paying the costs and expenses of creating such public service district; increasing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing interest payment dates other than semiannual and increasing the ten percent ceiling on the interest costs of the proceeds of such revenue bonds to thirteen percent; the acquisition, construction, financing and regulation by the West Virginia board of regents of automobile parking facilities at West Virginia University; the imposition of penalties for violation of the regulations with respect to such parking facilities; and the issuance by the board of regents of revenue bonds to finance in whole or in part such parking facilities, substituting "magistrate" for "justice of the peace"; increasing the seven percent ceiling on the stated rate of interest on such revenue bonds to twelve percent; authorizing the issuance of such revenue bonds without coupons and increasing the eight percent ceiling on the net return to the purchaser of such revenue bonds to thirteen percent; the disposition and use of student union fees imposed by state educational institutions and the issuance by the West Virginia board of regents of revenue bonds for student union buildings and increas-
ing the ten percent ceiling on the stated rate of interest on such revenue bonds to twelve percent.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three-a, article one, chapter seven of said code be amended and reenacted; that sections nine and fourteen, article three of said chapter seven be amended and reenacted; that sections seven and twelve, article sixteen, chapter eight of said code be amended and reenacted; that section fourteen, article eighteen of said chapter eight be amended and reenacted; that sections four, five, six and seventeen, article nineteen of said chapter eight be amended and reenacted; that sections four, five and sixteen, article twenty of said chapter eight be amended and reenacted; that sections fourteen and twenty-one, article one, chapter thirteen of said code be amended and reenacted; that section five, article two-d of said chapter thirteen be amended and reenacted; that sections three and four, article two-e of said chapter thirteen be amended and reenacted; that sections six, ten, nineteen and twenty-two-a, article thirteen, chapter sixteen of said code be amended and reenacted; that section thirteen, article thirteen-a of said chapter sixteen be amended and reenacted; that section twenty-five, article eleven, chapter eighteen of said code be amended and reenacted; and that section six, article twenty-four of said chapter eighteen be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

7. County Commissions and Officers.

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

13. Public Bonded Indebtedness.


18. Education.
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-8. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

The commission is hereby empowered to raise the cost of a project, as defined hereinabove, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in such special fund, except such part of the proceeds of sale of any bonds to be used to pay the cost of a project, for the payment of the principal of and interest on bonds issued pursuant to this article, such pledge to apply equally and ratably to separate series of bonds or upon such priorities as the commission shall determine. Such bonds shall be authorized by resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the commission expected to be received, from the United States of America or from any other source. The acceptance by the commission of any and all such funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments. Such bonds shall bear interest at not more than twelve percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the commission, at
such price and under such terms and conditions, all as the
commission may fix prior to the issuance of such bonds. The
commission shall determine the form of such bonds, in-
cluding coupons, if any, to be attached thereto to evidence
the right of interest payments, which bonds shall be signed
by the chairman and secretary of the commission, under the
great seal of the state, attested by the secretary of state, and
the coupons, if any, attached thereto shall bear the facsimile
signature of said chairman of the commission. In case any of
the officers whose signatures appear on the bonds or coupons
issued as hereinbefore authorized shall cease to be such
officers before the delivery of such bonds, such signatures
shall nevertheless be valid and sufficient for all purposes the
same as if they had remained in office until such delivery.
The commission shall fix the denominations of said bonds, the
principal and interest of which shall be payable at the office
of the treasurer of the state of West Virginia, at the capitol of
said state, or, at option of the holder, at some bank or trust
company within or without the state of West Virginia to be
named in the bonds, in such medium as may be determined
by the commission. The said bonds and interest thereon shall
be exempt from taxation by the state of West Virginia, or any
county or municipality therein. The commission may provide
for the registration of such bonds in the name of the owner as
to principal alone, and as to both principal and interest under
such terms and conditions as the commission may determine,
and shall sell such bonds in such manner as it may deter-
mine to be for the best interest of the state, taking into
consideration the financial responsibility of the purchaser,
and the terms and conditions of the purchase, and especially
the availability of the proceeds of the bonds when required
for payment of the costs of the project, such sale to be made at
a price not lower than a price which, computed upon stan-
dard tables of bond values, will show a net return of not
more than thirteen percent per annum to the purchaser upon
the amount paid therefor. The proceeds of such bonds shall
be used solely for the payment of the cost of the project for
which bonds were issued, and shall be deposited and checked
out as provided by section five of this article, and under such
further restrictions, if any, as the commission may provide. If
the proceeds of bonds issued for a project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority herein granted shall be eligible as investments for the workmen's compensation fund, teachers retirement fund, department of public safety death, disability and retirement fund, West Virginia public employees retirement system and as security for the deposit of all public funds. Such revenue bonds may be issued without any other proceedings or the happenings of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state. The aggregate amount of all issues of bonds outstanding at one time for all projects authorized hereunder shall not exceed sixty-two million five hundred thousand dollars including the renegotiation, reissuance or refinancing of any such bonds. No bonds or other obligations shall be issued or incurred hereunder, unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article
1. County Commissions Generally.
3. County Property.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county commission of Webster County is authorized to expend county funds in the opening of, and upkeep of, a sulphur well now situate on county property: Provided, however, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: Provided further, That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such commissions by this section.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications
as hereinafter provided: Provided, That the county com-
mission is further authorized, if the said county com-
mission so determines by a unanimous vote of its consti-
tuted membership, that two or more intersecting streets,
sidewalks, alleys and sewers, should be improved as one
project, in order to satisfy peculiar problems resulting from
access as well as drainage problems, then, in that event,
the said county commission may order such improvements as
one single unit and project, upon petition in writing duly
verified of the persons, firms or corporations owning not less
than sixty percent of the frontage of the lots abutting on both
sides of all streets or alleys, or portions thereof included by
said county commission in said unit and project.

The total cost including labor and materials, engineering,
and legal service of grading and paving, curbing, improving
any such street or alley (including the cost of the inter-
sections) and assessing the cost thereof shall be borne by
the owners of the land abutting upon such street or alley
when the work is completed and accepted according to the
following plan, that is to say, payment is to be made by all
landowners on either side of such street or alley so paved or
improved, in such proportion of the total cost as the frontage
in feet of each owner's land so abutting bears to the total
frontage of all the land so abutting on such street or alley, so
paved or improved as aforesaid, which computation shall be
made by the county engineer or surveyor and certified by him
to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms
or corporations owning not less than sixty percent of the
frontage of the lots abutting on one side of any street between
any two cross-streets or between a cross-street and an alley in
any unincorporated community requesting the county
commission so to do according to plans and specifications
submitted with such petition and offering to have their
property so abutting assessed with the total cost thereof, the
county commission may cause any sidewalk to be improved,
or paved, or repaved, substantially with such materials ac-
cording to such plans and specifications and the total cost
including labor and materials, engineering and legal service
of improving, grading, paving or repaving such sidewalk and
assessing the cost thereof shall, when the work is completed
and accepted, be assessed against the owners of the lots or
fractional part of lots abutting on such sidewalk, in such
portion of the total cost as the frontage in feet of each owner’s
land so abutting bears to the total frontage of all lots so
abutting on such sidewalk so paved or improved, as afore-
said, which computation shall be made by the county engi-
neer or surveyor and certified by him to the clerk of said
commission.

Upon petition in writing duly verified, of the persons, firms
or corporations owning not less than sixty percent of the
frontage of the lots abutting on both sides of any street or
alley, in any unincorporated community requesting the
county commission so to do according to plans and
specifications submitted with such petition and offering to
have their property so abutting assessed with the cost, as
hereinafter provided, the county commission may lay and
construct sanitary sewers in any street or alley with such
materials and substantially according to such plans and
specifications and when such sewer is completed and
accepted, the county engineer or surveyor shall report to
the county commission, in writing, the total cost of such
sewer and a description of the lots and lands, as to the lo-
cation, frontage, depth and ownership liable for such
sewer assessment, so far as the same may be ascertained,

In case of a corner lot, frontage is to be measured along the
longest dimensions thereof abutting on such street or alley
in which such sewer is laid. Any lot having a depth of two
hundred feet or more, and fronting on two streets or alleys,
one in the front and one in the rear of said lot, shall be assessed on both of said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer and where it has been assessed on the side it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such street, alley or sidewalk in a manner which does not require the permanent paving or repaving thereof, the county commission shall likewise have authority to improve such street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion which the frontage of their lots abutting upon such street, alley or sidewalk bears to the total frontage of all lots abutting upon such street, alley or sidewalk so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the street, alley or sidewalk affected, and to give notice thereof by publication of such notice 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 in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving or sewering will result in special benefits to all owners of property abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement,
reserving the right to reject any or all bids, to let a contract for
such work and materials to the lowest responsible bidder.

Any owner or property abutting upon said street, alley or
sidewalk aggrieved by such order shall have the right to
review the same on the record made before the county
commission by filing within ten days after the entry of such
order a petition with the clerk of the circuit court assigning
errors and giving bond in a penalty to be fixed by the circuit
court to pay any costs or expenses incurred upon such appeal
should the order of the county commission be affirmed. The
circuit court shall proceed to review the matter as in other
cases of appeal from the county commission.

All assessments made under this section shall be certified
to the county clerk and recorded in a proper trust deed book
and indexed in the name of the owner of any lot or fractional
part of a lot so assessed: The assessment so made shall be a
lien on the property liable therefor, and shall have priority
over all other liens except those for taxes, and may be
enforced by a civil action in the name of the contractor
performing the work in the same manner as provided for
other liens for permanent improvements. Such assessment
shall be paid in not more than ten equal annual installments,
bearing interest at a rate not to exceed twelve percent per
annum, as follows: That first installment, together with
interest on the whole assessment, shall be paid not later than
one year from the date of such assessment, and a like
installment with interest on the whole amount remaining
unpaid each year thereafter until the principal and all interest
shall have been paid in full.

The county commission may issue coupon-bearing cer-
tificates payable in not more than ten equal annual in-
stallments for the amount of such assessment and the
interest thereon, to be paid by the owner of any lot or
fractional part thereof, fronting on such street, alley or
sidewalk which has been improved, paved, or repaved or in
which a sewer has been laid, as aforesaid, and the holder of
said certificate shall have a lien having priority over all other
liens except those for taxes upon the lot or part of lot fronting
on such street, alley or sidewalk, and such certificate shall
likewise draw interest from the date of assessment at a rate
not to exceed twelve percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm or corporation: Provided, that the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewer ing to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such street, alley or sidewalk so improved, paved, repaved or sewer ed shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest
at any time, within thirty days following the date of the
assessment.

Nothing in this section contained shall be construed to
authorize the county commission of the various counties to
acquire any road construction, ditching or paving equipment.
The county commissions are hereby authorized to rent from
the state road commissioner or any other person, firm or
corporation such equipment as may be necessary from time
to time, to improve any street or sidewalk which petitioners
do not desire to have paved in a permanent manner, and for
such purpose to employ such labor as may be necessary but
no expense connected therewith shall be charged to any
county funds.

No county commission shall be under any duty after the
paving, repaving or improvement of any street, alley or
sidewalk or the laying of any sanitary sewer under the
provisions of this section, to maintain or repair the same, but
any such commission shall have authority upon petition duly
verified, signed by at least sixty percent of the owners of
property abutting upon any improvement made under this
section, to maintain or repair such improvement or sewer and
to assess the cost thereof against the owners of such abutting
property in the same manner as the cost of the original im-
provement.

ARTICLE 3. COUNTY PROPERTY.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.
§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care
facilities and other related facilities; financing.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

Any county commission issuing revenue bonds under the
provisions of this article shall thereafter, so long as any such
bonds remain outstanding, operate and maintain said
courthouse, hospital, other public buildings, jail or regional
correctional center, to provide revenue sufficient to pay all
operating costs, provide a sinking fund for, and to retire such
bonds and pay the interest thereon as the same may become
due. The amounts, as and when so set apart by said county
commission, shall be remitted to the West Virginia municipal
bond commission at least thirty days previous to the time
interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and with the order pursuant to which the bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any order passed pursuant to the provisions of this article, and shall invest all sinking funds, as provided by general law. Revenue bonds issued under the provisions of this article are hereby declared to be and to have all the qualities of negotiable instruments. Such bonds shall bear interest at the rate or rates set by the county commission, not to exceed twelve percent per annum, payable semiannually, and shall mature at any time fixed by the county commission, in not more than thirty years from their date. Such bonds shall be sold at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such price and under terms and conditions as said county commission may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of the state treasurer, or a designated bank or trust company within or without the state of West Virginia.

In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The county commission shall by order entered prior to the issuance of said bonds, fix the denominations, times and places of payment of such bonds, the principal and interest of which shall be payable in lawful money of the United States of America. The proceeds of such bonds shall be used solely for the payment of the cost of land, buildings, furniture and equipment thereon, and shall be checked out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. If the proceeds of such bonds issued for any courthouse, hospital, other
public buildings, jail or regional correctional center, shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the commission in its said order, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

Prior to the preparation of definitive bonds, the county commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.

The county commission of any county is hereby authorized and empowered to acquire by purchase or construction and to thereafter own, equip, furnish, operate, lease, improve and extend a public hospital, clinic, long-term care facility and other related facilities, with all appurtenances, including the necessary real estate as a site therefor. Any such county public hospital acquired pursuant thereto may include a nurses home and nurses training school. The county commission is further authorized and empowered, upon acquiring a hospital, clinic, long-term care facility or other related facility, to lease to others any or all such facilities for such rentals and upon such terms and conditions as the county commission may deem advisable. For the purpose of paying all or any part of the costs, not otherwise provided, of acquiring, completing, equipping, furnishing, improving or extending such hospital, clinic, long-term care facility or other related facility, the county commission is hereby authorized and empowered by order duly entered of record,
to issue and sell the negotiable revenue bonds of such county, which shall be payable solely and only from all or such part of the net revenues from the operation of such county public hospital, clinic, long-term care facility or other related facility as may be provided by said order; and each such revenue bond so issued shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by the revenues pledged therefor, and that such bond does not constitute an indebtedness of such county or the county commission thereof within the meaning of any constitutional or statutory limitation or provision. Such revenue bonds may bear such date or dates, may mature at such time or times not exceeding thirty-four years from their respective dates, may bear interest at such rate or rates not exceeding twelve percent per annum, may be of such denomination or denominations, may be in such form, may carry such registration privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this article as may be provided in such order. Such revenue bonds shall be exempt from taxation by the state of West Virginia and the other taxing bodies of the state. In determining the amount of revenue bonds to be issued, there may be included any expenses in connection with and incidental to the issuance and sale of bonds and for the preparation of plans, specifications, surveys and estimates, interest during the estimated construction period and for six months thereafter, and a reasonable amount for working capital and prepaid insurance. Such bonds may be sold in such manner, at such times and upon such terms as may be determined by the county commission to be for the best interests of the county: Provided, That no bonds may be sold upon terms which will result in the net interest cost of more than thirteen percent per annum computed to maturity of the bonds according to standard tables of bond values. There may be included in any such order authorizing the issuance of revenue bonds such covenants, stipulations and conditions as may be deemed necessary with respect to the expenditure of the bond proceeds, the operation and maintenance of the county public hospital, clinic, long-term care facility or other
related facility, and the custody and application of the revenues from such operation. The holder of any bond or bonds may, by mandamus or other appropriate proceedings, require and compel performance of any duties imposed by law in connection with the hospital, clinic, long-term care facility or other related facility, or any covenant, stipulation or condition that may have been expressed in such bond order.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

16. Municipal Public Works; Revenue Bond Financing.
18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-7. Ordinance for construction, etc., of works.
§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

§8-16-7. Ordinance for construction, etc., of works.

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the
works; (e) contain such provisions as the governing body
determines are necessary or desirable with regard to the
establishment and setting aside of reserves from the proceeds
of such revenue bonds or from the revenues of said works, or
from both, and the administration and disposition thereof;
and (f) contain such other provisions as may be necessary or
proper in the premises. When two or more municipalities take
joint action under the provisions of this article, a certified
copy of each such ordinance shall be filed in the office of the
clerk of the county commission of the county or counties in
which the municipalities are located and in the office of the
state tax commissioner, and when any such municipality
is located in more than one county, the filing for that
municipality shall be in the office of the clerk of the county
commission in which the major portion of the territory of
such municipality is located. Before any such ordinance shall
become effective, an abstract of the ordinance, determined by
the governing body or each governing body, as the case may
be, to contain sufficient information as to give notice of
the contents of such ordinance, together with the following
described notice, shall be 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 such municipality or each such
municipality, as the case may be. The notice to be published
with said abstract of the ordinance shall specify a date, time
and place for a public hearing, the date being not less than ten
days after the first publication of said abstract and notice and
not prior to the last publication of said abstract and notice, at
which time and place all parties and interest may appear
before the governing body of the municipality or each such
municipality and may be heard as to whether or not said
ordinance shall be put into effect, and said notice shall also
identify the office in which a certified copy of such ordinance
shall be on file for review by interested persons during the
office hours of such office. At such hearing all objections and
suggestions shall be heard and the governing body or each
such governing body shall take such action as it or they shall
deem proper in the premises: Provided, That if at any such
hearing written protest is filed by thirty percent or more of
the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided, however, That in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one opponent, and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body.

§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, either coupon or registered, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the state. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by
agreement of the governing bodies of the participating
municipalities set forth in the ordinance of each participating
municipality authorizing the issuance of such bonds. The
bonds shall contain a statement on their face that the
municipality or municipalities issuing the same shall not be
obligated to pay the same, or the interest thereon, except
from the special fund derived from the net revenue of the
works, or the pro rata part thereof, as provided for in section
eleven hereof. All such bonds shall be, and shall have and are
hereby declared to have all the qualities and incidents of
negotiable instruments, under the Uniform Commercial Code
of this state. The bonds shall be executed in such manner as
the governing body or bodies may direct. The bonds shall be
sold by the governing body or bodies in such manner as may
be determined to be for the best interest of the municipality
or municipalities: Provided, That said bonds shall not be
negotiated at a price lower than a price which when
computed to maturity upon standard tables of bond values
will show a net return of more than thirteen percent per
annum to the purchaser upon the amount paid therefor. Any
surplus of the bond proceeds over and above the cost of the
project shall be paid into the sinking fund hereinafter
provided for. If the proceeds of the bonds, by error of
calculation or otherwise, shall be less than the cost of the
project, additional bonds may in like manner be issued to
provide the amount of such deficit, and, unless otherwise
provided in the ordinance or ordinances authorizing the
issuance of the bonds first issued, or in the trust indenture
hereinafter authorized, shall be deemed to be of same issue,
and shall be entitled to payment without preference or
priority of the bonds first issued; and if any preference or
priority of the bonds first issued is provided for in the ordi-
nance or ordinances authorizing the issuance of the bonds
first issued or in said trust indenture, such preference or prior-
ity shall not extend to an amount exceeding ten percent of the
original issue. Prior to the preparation of the definitive bonds,
interim certificates may, under like restrictions, be issued,
exchangeable for definitive bonds upon the issuance of the
latter.
ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH.


Every municipality is hereby empowered and authorized to issue its bonds for any improvements under the provisions of this article in anticipation of special assessments to be made upon the property abutting upon the streets, alleys, public ways or easements, or sewer rights-of-way or easements, so improved, and such bonds may be in such an amount as will be sufficient to pay the entire estimated cost and expense of such improvements for which such special assessments are levied. Such municipality is also authorized to sell such bonds, but the price for which they are sold shall not be below the par value of such bonds. Such bonds shall be payable in not to exceed ten years from the date of the issuance thereof, and shall bear interest at not to exceed twelve percent per annum, payable at such times, as shall be determined by the governing body of the municipality; and in the issuance and sale of such bonds, the municipality shall be governed by all the restrictions and limitations of the constitution of this state, and by the restrictions and limitations of the statutes of this state with respect to the issuance and sale of other bonds, so far as they are not in conflict with the provisions of this article; and the assessments shall be collected as provided in sections ten and twelve of this article, and as paid and collected shall be applied to the liquidation of such bonds and the interest thereon; and if by reason of penalties collected with delinquent assessments there be any balance after the payment of such bonds and all accrued interest and costs, such balance shall be turned into the municipal treasury to the credit of the interest and sinking fund of the municipality: Provided, That no such municipality shall by sale or issuance of such bonds cause the aggregate of its indebtedness of every kind whatsoever to exceed five percent of the value of taxable property therein: Provided, however, That nothing herein contained shall be construed as authorizing any such municipality to become indebted in any other manner or for any purpose, to an amount, including its existing indebtedness, in the aggregate exceeding two and one-half
percent of the value of the taxable property therein, as provided in section three, article one, chapter thirteen of this code, except for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimproving the streets, alleys, public ways or easements, or sewer rights-of-way or easements, of such municipality, as provided for in this article; nor shall such municipality make such issuance and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years. All of the assessments, interest and penalties collected from the abutting property owners on account of the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimproving the streets, alleys, public ways or easements, or sewer rights-of-way or easements, of any such municipality, under the provisions of this article, shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding ten years; and in the event that the assessments, interest and penalties so collected do not amount to a sum sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years, then the governing body of such municipality shall collect so much of such levy as will pay annually the interest on such debt and the principal thereof within and not exceeding ten years.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

§8-19-5. Publication of abstract of ordinance and notice; hearing.

§8-19-6. Amount, negotiability and execution of bonds.

§8-19-17. Grants, loans and advances.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

Whenever a municipality shall, under the provisions of
this article, determine to acquire, by purchase or otherwise, to construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall be payable as to principal at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest
upon all bonds and to create a sinking fund to pay the
principal thereof as and when the same become due, and
reasonable reserves therefor, and to provide for the repair,
maintenance and operation of the waterworks or electric
power system, and to provide an adequate depreciation fund,
and to make any other payments which shall be required or
provided for in the ordinance authorizing the issuance of said
bonds.

§8-19-5. Publication of abstract of ordinance and notice; hearing.

After the ordinance for any project under this article has
been adopted, an abstract of the ordinance, determined by
the governing body to contain sufficient information as to
give notice of the contents of such ordinance, together with
the following described notice, shall be 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 such munic-
ipality. The notice to be published with said abstract of
the ordinance shall state that said ordinance has been
adopted, that the municipality contemplates the issuance of
the bonds described in the ordinance, that any person
interested may appear before the governing body, upon a
certain date, which shall be not less than ten days subsequent
to the date of the first publication of such abstract and notice
and which shall not be prior to the date of the last publication
of such abstract and notice, and present protests, and that a
certified copy of the ordinance is on file with the governing
body for review by interested parties during the office hours
of the governing body. At such hearing all protests and
suggestions shall be heard and the governing body shall take
such action as it shall deem proper in the premises: Provided,
That if at such hearing written protest is filed by thirty
percent or more of the freeholders of the municipality, then
the governing body of said municipality shall not take further
action unless four fifths of the qualified members of said
governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

Bonds herein provided for shall be issued in such amounts
as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than thirteen percent per annum to the purchaser upon the amount paid therefor.

§8-19-17. Grants, loans and advances.

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the
provisions of this article, the revenues of the said waterworks
system or electric power system or grants to the municipality
from any agency of the state or from the United States of
America or any federal or public agency or department of the
United States or any private agency, corporation or in-
dividual or from any combination of such sources of
payment, and to enter into the necessary contracts and
agreements to carry out the purposes hereof with any agency
of the state, the United States of America or any federal or
public agency or department of the United States, or with any
private agency, corporation or individual.

In no event shall any such loan or temporary advance be a
general obligation of the municipality and such loans or
temporary advances, including the interest thereon, shall be
paid solely from the sources specified in this section.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYS-
TEMS.

§8-20-4. Publication of abstract of ordinance and notice; hearing.

§8-20-5. Amount, negotiability and execution of bonds; refund of out-
standing obligations or securities by sale or exchange of bonds.


§8-20-4. Publication of abstract of ordinance and notice; hearing.

After the ordinance for any project under the provisions of
this article has been adopted, an abstract of the ordinance,
determined by the governing body to contain sufficient
information as to give notice of the contents of such
ordinance, together with the following described notice, shall
be 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
such municipality. The notice to be published with said
abstract of the ordinance shall state that said ordinance has
been adopted, that the municipality contemplates the
issuance of the bonds described in the ordinance, that any
person interested may appear before the governing body
upon a certain date, which shall not be less than ten days
subsequent to the date of the first publication of such abstract
and notice and which shall not be prior to the date of the last
publication of such abstract and notice, and present protests
18 and that a certified copy of the ordinance is on file with the
governing body for review by interested parties during the
office hours of the governing body. At such hearing all
protests and suggestions shall be heard and the governing
body shall take such action as it shall deem proper in the
premises: Provided, That if at such hearing written protest is
filed by thirty percent or more of the freeholders of the
municipality, then the governing body of said municipality
shall not take further action unless four fifths of the qualified
members of said governing body assent thereto.

§8-20-5. Amount, negotiability and execution of bonds; refund of
outstanding obligations or securities by sale or exchange
of bonds.

For the purpose of defraying the cost of acquisition,
construction, establishment or equipment of any such water-
works or sewerage system, or a combined waterworks
and sewerage system, and for the purpose of paying the cost
of constructing any extensions, additions, betterments or
improvements to either the waterworks or sewerage system
of said combined waterworks and sewerage system, or both,
any such municipality may issue revenue bonds under the
provisions of this article. All such bonds may be authorized,
issued and sold pursuant to ordinance in installments at
different times or an entire issue or series may be sold at one
time. Such bonds shall bear interest at a rate not to exceed
twelve percent per annum, payable at such times, and shall
mature within the period of usefulness of the project
involved, to be determined by the governing body and in any
event within a period of not more than forty years. Such
bonds may be in such denomination or denominations, may
be in such form, either coupon or registered, may carry such
registration and conversion privileges, may be executed in
such manner, may be payable in such medium of payment, at
such place or places, may be subject to such terms of
redemption, with or without a premium, may be declared to
become due before the maturity date thereof, may provide for
the replacement of mutilated, destroyed, stolen or lost bonds,
may be authenticated in such manner and upon compliance
with such conditions, and may contain such other terms and
covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all such bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with said combined waterworks or sewerage system, and all the moneys, revenues and other income of such municipality derived from such combined waterworks and sewerage system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Such bonds may be sold in such manner as the governing body shall determine. If any such bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost of such municipality of the proceeds of such bonds shall not exceed thirteen percent per annum computed to maturity according to the standard table of bond values. If the governing body of the municipality determines to sell any revenue bonds of such combined waterworks and sewerage system for refunding purposes, the proceeds of such bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the laws of this state.

Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from
the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system included in a combined waterworks and sewerage system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined waterworks and sewerage system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined waterworks and sewerage system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier. Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged; but each such bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.


1 Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction,
establishment, extension or equipment of combined waterworks and sewerage systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined waterworks and sewerage system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article
1. Bond Issues for Original Indebtedness.
2D. Airport Development Bond Act.
2E. Revenue Bond Refunding Act.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-21. Advertisement and sale of bonds; purchase by state governmental agency.


If three fifths of all the votes cast for and against the proposition to incur debt and issue negotiable bonds shall be in favor of the same, the governing body of the political
division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount stated in the proposition; fix the date thereof; set forth the denominations in which they shall be issued, which denominations shall be one hundred dollars or multiples thereof; determine the rate or rates of interest which the bonds shall bear, which rate or rates of interest shall be within the maximum rate stated in the proposition submitted to vote and payable semiannually, prescribe the medium with which the bonds shall be payable; require that the bonds shall be made payable at the office of the state treasurer and at such other place or places as the body issuing the same may designate; provide for a sufficient levy to pay the annual interest on the bonds and the principal maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; and prescribe a form for executing the bonds authorized.

§13-1-21. Advertisement and sale of bonds; purchase by state governmental agency.

The governing body of the political division issuing such bonds shall sell the same and collect the proceeds, which proceeds shall be deposited with its treasurer. Whenever any bonds are to be sold, the body authorized to sell the same shall, before offering them to the public, offer them in writing to the secretary of state for purchase by any of the governmental agencies of the state authorized by law to purchase such bonds, which offer shall be held to be an offer to sell the bonds at their par value to the West Virginia municipal bond commission and to any other of the governmental agencies of the state authorized by law to purchase such bonds. If, after such offer is made, the governing body of the political division making the offer shall be notified in writing that none of such agencies of the state has elected to purchase such bonds, or after ten days have elapsed after such offer of sale has been made without an acceptance by any of such agencies of the state, then the governing body of the political division shall advertise such
bonds for sale, on sealed bids, which advertisement shall be 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 political division. The first publication shall be made at least fourteen days before the date fixed for the reception of bids. Such advertisement shall also be published in a financial paper published either in the city of New York or the city of Chicago, or in a newspaper published in a city of this state having a population of not less than twenty thousand inhabitants, according to the last federal census. The governing body may reject any and all bids. If the bonds be not sold pursuant to such advertisement, they may within one hundred twenty days after the date advertised for the reception of bids, be sold by the governing body at private sale, but no private sale shall be made at a price less than the highest bid which shall have been received. If not sold, such bonds shall be readvertised in the manner herein provided. In no event shall bonds be sold for less than their par value.

ARTICLE 2D. AIRPORT DEVELOPMENT BOND ACT.


All bonds issued by a county commission under the authority of this article shall be limited obligations of the county, the principal of and interest on which shall be payable out of the revenues derived from the operation of the airport for which the bonds are issued or any other revenue derived from such airport, less operating and maintenance costs and expenses. The bonds and interest coupons issued under the authority of this article shall never constitute evidence of indebtedness of the county issuing the same within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county issuing the same. Neither shall such bonds and interest thereon be a charge against the general credit or taxing powers of the county and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time, and from time to time, may be in such form and denomination, may be of such tenor, must be negotiable but may be
registered as to the principal thereof, may be payable in such amounts and at such time or times, may be payable at such place or places, may bear interest at such rate or rates not to exceed twelve percent per annum, payable at such place or places and evidenced in such manner, and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the county commission whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the county commission at public or private sale, and such sale shall be made at a price not lower than a price which, computed upon standard tables of bond values, will have a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The said bonds may also be issued and delivered to the owners of an airport or private facility for the landing and taking off of airplanes with appurtenant facilities and conveniences in exchange therefor and in payment of the purchase price thereof.

The bonds issued pursuant to this article by a county commission shall be signed by the president of the county commission and attested by the clerk of the county commission under the seal of the commission. The coupons attached thereto shall bear the facsimile signature of the president of the county commission. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the airport, additional bonds may in like manner be issued to provide the amount of deficiency, and unless otherwise provided for in the trust agreement, mortgage, or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.
ARTICLE 2E. REVENUE BOND REFUNDING ACT.
§13-2E-3. Authority to refund.
§13-2E-4. Terms, form and execution of refunding bonds.

§13-2E-3. Authority to refund.

1 Any public body may issue refunding bonds for the
2 purpose of refunding all or any part of its revenue bonds now
3 or hereafter outstanding, whether or not such revenue bonds
4 are at the time of the refunding due or optional for
5 redemption, under the circumstances and restrictions set
6 forth in this article. Refunding bonds shall be payable from
7 revenues derived from the same enterprise as the revenue
8 bonds to be refunded except where the public body has
9 outstanding revenue bonds payable from the revenues of an
10 enterprise and is authorized under any other law to combine
11 and consolidate such enterprise with another enterprise and
12 issue revenue bonds payable from the revenues of the
13 combined and consolidated enterprises. An issue of re-
14 funding bonds may refund part or all of one or more issues
15 of outstanding revenue bonds: Provided, That part or all of
16 two or more issues of outstanding revenue bonds may not be
17 refunded under this article unless either (a) all of the issues of
18 outstanding revenue bonds to be refunded are payable from
19 revenues derived from the same enterprise, or (b) the public
20 body is authorized under any other law to combine or
21 consolidate the enterprises in question and issue revenue
22 bonds payable from the revenues of the combined or
23 consolidated enterprises.

24 Refunding bonds may be issued hereunder whenever the
25 governing body of the public body deems it expedient and,
26 notwithstanding any provision in this article to the contrary,
27 may be issued as part of a series of revenue bonds issued for
28 the purpose, in addition to such refunding, of financing the
29 acquisition or construction of improvements, betterments,
30 extensions or replacements to the particular enterprise, as
31 provided by other articles of this code.

§13-2E-4. Terms, form and execution of refunding bonds.

1 Refunding bonds authorized under this article may be
2 issued in one or more series; may bear such date or dates;
may mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, not exceeding forty years from their respective dates; may bear interest at such rate or rates; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration and conversion privileges; may be executed in such manner; may be payable in such medium of payment, at such place or places; may be subject to such terms of redemption, with or without a premium; may be declared or become due before the maturity date; may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner and upon compliance with such conditions; and may contain such other terms and covenants, as may be determined by the governing body in the proceedings authorizing the refunding bonds. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

CHAPTER 16. PUBLIC HEALTH.

Article
13A. Public Service Districts for Water, Sewerage and Gas Services.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-6. Publication and hearing upon ordinance.

§16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

§16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.


§16-13-6. Publication and hearing upon ordinance.

After such ordinance shall have been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following
described notice, shall be 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 municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto.

§16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company
within or without the state. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the state. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

§16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

Any municipality operating a sewage collecting system
and/or a sewage disposal plant or plants as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into such contracts with such owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no such contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture. The lessee shall by ordinance have power to establish, change and adjust rates and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates and charges for the service rendered in the municipality where the works are owned and operated, and such rates or charges shall be collectible and shall be a lien as herein provided for rates and charges made by the owner. The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any such contract shall, if so provided in said ordinance or trust indenture, be deemed to be a part of the revenues of the works as in this article defined and be applied as herein provided for the application of such revenues.


Any municipality is authorized and empowered to accept
loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.


For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such
district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding twelve percent per annum, payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed thirteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

CHAPTER 18. EDUCATION.

Article
11. West Virginia University.
24. Fees and Other Money Collected at State Institutions of Higher Education.
ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-25. Acquisition, construction, financing and regulation of parking facilities; penalties.

The board of regents is hereby authorized to construct, maintain and operate automobile parking facilities on the campus or other areas under its jurisdiction for use by students, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable rules and regulations as may be prescribed by the board, which rules and regulations shall have the force and effect of law. A summary of the rules and regulations pertaining to parking and the penalties which may be imposed for any violation thereof shall be posted conspicuously in each parking area.

No person shall park any vehicle in violation of such rules and regulations, and any person parking any vehicle contrary thereto shall be subject to a fine of not less than one dollar nor more than five dollars for each offense. Magistrates in Monongalia County and the police court and police court judge of Morgantown, West Virginia, shall have jurisdiction of all such offenses.

In addition, the board shall have the authority, whenever any vehicle is parked in a university parking facility in violation of the posted rules and regulations, to remove the vehicle, by towing or otherwise, to an established garage or parking lot for storage until called for by the owner or his agent. In such case, the owner shall be liable for the reasonable cost of such removal and storage, and until payment of such cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

The board shall have authority to charge fees for the use of parking facilities under its control. All moneys collected for such use shall be paid into a special fund which is hereby
created in the state treasury. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used to finance the construction of additional parking facilities or the acquisition by lease or purchase of additional parking areas. The board may use the moneys in such special fund to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance such costs and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Whenever parking facilities are provided in any university building financed in whole or in part by the issue of revenue bonds otherwise authorized by law, the net revenue derived from the parking facilities included in such building may be used or pledged to meet the sinking fund requirements of the bonds issued for construction of the buildings. The pledge of moneys in such special fund for any revenue bonds shall be a prior and superior charge on such special fund over the use of any of the moneys in such fund to pay for the cost of any of such purposes on a cash basis.

Such revenue bonds may be authorized and issued from time to time by the board of regents to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the board shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special fund.

The issuance of such bonds shall be authorized by a resolution adopted by the board, and such revenue bonds shall bear such date or dates; mature at such times not exceeding forty years from their respective dates; bear interest at such rate or rates, not exceeding twelve per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to
such terms of prior redemption at such prices not exceeding one hundred six per centum of the principal amount thereof; and shall have such other terms and provisions as the board shall determine. Such revenue bonds shall be signed by the governor and by the president of the board of regents, under the great seal of the state, attested by the secretary of state, and the coupons, if any, attached thereto shall bear the facsimile signature of the president of the board. Such revenue bonds shall be sold in such manner as the board may determine to be for the best interest of the state, such sale to be made at a price not lower than a price which will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor computed to the stated maturity dates of such revenue bonds without regard to any right of prior redemption.

The board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special fund, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds under the provisions of this section; and as to any other matters or provisions which are deemed necessary and advisable by the board in the best interests of the state and to enhance the marketability of such revenue bonds.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.
ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.

Whenever the term "student union building" is used in this section the same shall mean a student union building or a combination student union building and dining hall building; and wherever the term "building fund" is used in this section the same shall mean the respective special student union building funds created as provided in section one of this article for each state educational institution which has imposed student union fees pursuant to section one of this article, to be expended by the West Virginia board of regents for the benefit of the state educational institutions under its control.

The West Virginia board of regents may make expenditures from such building funds at the various state educational institutions under its control to finance in whole or in part together with any federal, state or other grants or contributions, any one or more of the following purposes:

1. The construction and acquisition of new student union buildings. 2. The acquisition, renovation and improvement of existing buildings to be used as student union buildings. 3. The construction of additions, extensions and improvements to existing student union buildings. 4. The acquisition of furnishings and equipment for any existing student union buildings or student union buildings to be constructed or acquired, or the construction of any roads, utilities or other properties, real or personal, or for any other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such student union buildings. 5. The payment of the cost of operation and maintenance of such student union buildings, subject however to any covenants or agreements made with the holders of revenue bonds heretofore and hereafter issued pursuant to this section or pursuant to section one of this article.

The West Virginia board of regents, at its discretion, may
use the moneys in such building funds to finance the costs of
the above purposes on a cash basis, or may from time to time
issue revenue bonds of the state as provided in this section to
finance all or part of such purposes and pledge all or any part
of the moneys in such building funds for the payment of the
principal of and interest on such revenue bonds, and for
reserves therefor. Any pledge of such building funds for such
revenue bonds shall be a prior and superior charge on such
special funds over the use of any of the moneys in such funds
to pay for the cost of any of such purposes on a cash basis, or
for the payment of the cost of operation and maintenance, or
any part thereof, of such student union buildings, under such
terms and conditions as shall be provided in the proceedings
which authorized the issuance of such revenue bonds.

Such revenue bonds may be authorized and issued from
time to time by the West Virginia board of regents to finance
in whole or in part the purposes at any state educational
institution under its control provided for in this section in an
aggregate principal amount not exceeding the amount which
the board shall determine can be paid as to both principal and
interest and reasonable margins for a reserve therefor from
the moneys in such building funds.

The issuance of such revenue bonds shall be authorized by
a resolution adopted by the West Virginia board of regents, and such revenue bonds shall bear such date or dates; mature
at such time or times not exceeding forty years from their
respective dates; bear interest at such rate or rates, not
exceeding twelve per centum per annum; be in such form
either coupon or registered, with such exchangeability and
interchangeability privileges; be payable in such medium of
payment and at such place or places, within or without the
state; be subject to such terms of prior redemption at such
prices not exceeding one hundred five per centum of the
principal amount thereof; and shall have such other terms
and provisions as the board shall determine. Such revenue
bonds shall be signed by the governor and by the president of
the West Virginia board of regents, under the great seal of the
state, attested by the secretary of state, and the coupons
attached thereto shall bear the facsimile signature of the
74 president of the West Virginia board of regents. Such revenue
75 bonds shall be sold in such manner as the board may
76 determine to be for the best interest of the state.

77 The West Virginia board of regents may enter into trust
78 agreements with banks or trust companies, within or without
79 the state, and in such trust agreements or the resolutions
80 authorizing the issuance of such bonds may enter into valid
81 and legally binding covenants with the holders of such
82 revenue bonds as to the custody, safeguarding and dis-
83 position of the proceeds of such revenue bonds, the
84 moneys in such building funds, sinking funds, reserve funds, or
85 any other moneys or funds; as to the rank and priority, if
86 any, of different issues of revenue bonds issued by the board
87 for the same educational institution under the provisions of
88 this section; as to the maintenance or revision of the amounts
89 of such student union fees, and the terms and conditions, if
90 any, under which any of such student union fees may be
91 reduced; and as to any other matters or provisions which are
92 deemed necessary and advisable by the board in the best
93 interests of the state and to enhance the marketability of such
94 revenue bonds.

95 Any revenues or income derived from the operation of such
96 student union buildings may, in the discretion of the board,
97 be used to pay the cost of the operation and maintenance of
98 such student union buildings, or for the debt service on any
99 bonds issued pursuant to this section or pursuant to any
100 other law.

101 After the issuance of any of such revenue bonds, the
102 student union fees at the state educational institution for
103 which such revenue bonds were issued shall not be reduced
104 as long as any of such revenue bonds are outstanding and
105 unpaid except under such terms, provisions and conditions
106 as shall be contained in the resolution, trust agreement or
107 other proceedings under which such revenue bonds were
108 issued.

109 Such revenue bonds shall be and constitute negotiable
110 instruments under the Uniform Commercial Code of the
111 state and shall, together with the interest thereon, be exempt
from all taxation by the state of West Virginia, or by any
county, school district, municipality or political subdivision
thereof; and such revenue bonds shall not be deemed to be
obligations or debts of the state, and the credit or taxing
power of the state shall not be pledged therefor, but such
revenue bonds shall be payable only from the student union
fees pledged therefor as provided in this section.

The provisions of this section shall constitute an additional,
alternative and complete authority for the exercise of the
powers and the issuance of the bonds provided for in this
section, but shall not prevent the West Virginia board of
regents from exercising similar or related powers or issuing
bonds therefor under any other law or laws, but the board, in
exercising the powers and issuing the bonds provided for in
this section, shall only be required to comply with the pro-
visions of this section and shall not be required to comply
with or be subject to the provisions of any other law or laws.

CHAPTER 3
(H. B. 106—By Mr. Speaker, Mr. See)

[Passed May 6, 1981: in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article seven, chapter
seven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to mileage allowance for county
officials, their assistants, deputies and employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS;
COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSA-
TION.

§7-7-16. Mileage allowance for county officials and employees.

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 ve-
hicles in the actual performance and discharge of their official
duties, reimbursement at a uniform rate for all individuals, not
to exceed the rate set by the commissioner of finance and ad-
ministration for state employees.

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.

CHAPTER 4
(Com. Sub. for S. B. 12—By Mr. Williams)

[Passed May 14, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact sections ten-a and seventeen, article
one, chapter fifty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to amend
and reenact section thirteen, article two of said chapter
fifty-one, relating to increasing the salaries of justices of the
supreme court of appeals; providing for development of a
system of reporting by justices and judges as to the actual
amount of time including travel time spent by each justice or
judge in the conduct of his official duties in court; and
increasing the salaries of judges of circuit courts.

Be it enacted by the Legislature of West Virginia:

That sections ten-a and seventeen, article one, chapter fifty-one
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted; and that
section thirteen, article two of said chapter fifty-one be amended
and reenacted, all to read as follows:
Article
1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

The salary of each of the justices of the supreme court of appeals shall be forty-nine thousand dollars per year.


The director shall, when authorized by the supreme court of appeals, be the administrative officer of said court and shall have charge, under the supervision and direction of the supreme court of appeals, of:

(a) All administrative matters relating to the offices of the clerks of the circuit and intermediary courts and of the offices of justice of the peace, and all other clerical and administrative personnel of said courts; but nothing contained in this act shall be construed as affecting the authority of the courts to appoint their administrative or clerical personnel;

(b) Examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts, including, as an integral part of the compensation of justices and judges, the development of a system of reporting by justices and judges as to the actual amount of time, including travel time, spent by each justice or judge in the conduct of his official duties in court;

(c) The preparation of a proper budget to secure the appropriation of moneys for the maintenance, support and operation of the courts;

(d) The purchase, exchange, transfer and distribution of equipment and supplies, as may be needful or desirable;

(e) Such other matters as may be assigned to him by the supreme court of appeals. The clerks of the circuit courts,
28 intermediate courts and courts of the justices of the peace
29 shall comply with any and all requests made by the director
30 or his assistants for information and statistical data bearing
31 on the state of the dockets of such courts, or such other
32 information as may reflect the business transacted by them;
33 (f) Annual report of activities and estimates of
34 expenditures.—The director, when required to do so by the
35 supreme court of appeals, shall submit annually to the court a
36 report of the activities of the administrative office and of the
37 state of business of the courts, together with the statistical
38 data compiled by him, with his recommendations.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.


1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county
3 commission, board of commissioners or other political
4 subdivision shall supplement or add to such salaries.
5 The annual salary of all circuit judges shall be forty-five
6 thousand dollars per year.

CHAPTER 5
(S. B. 15—Originating in the Senate Committee on Finance)

|Passed May 11, 1981; in effect July 1, 1981. Approved by the Governor.|
reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen, article nine-a, chapter eighteen of said code, all relating to adding and revising definitions, increasing salaries of professional educators, to combining the present two allocations for teachers' salaries into one; providing for substitute teachers' pay; to using the combined salary schedule in the allocation of funds for the basic foundation program; to increase the salaries of service personnel and to include all eligible basic salaries of service personnel in state aid computations to a maximum of thirty-four for each one thousand pupils in adjusted enrollment; to increase the allocation factors for fixed charges and transportation; to reduce the percentage factor in the allocation for other current expense; to revise the method of allocating moneys equalling the increases in local share to one concentrating on aiding counties having the lower average expenditures per pupil; to assure for five years that increases in salaries for personnel are matched by increased state aid, and to aid counties having ratios of enrollment to service personnel which are higher than the state average; to provide for computation of local share, appraisal and assessment of property; to provide statewide facilities planning; and to require standards for educational quality and approval of county education programs.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two-a, article four of said chapter eighteen-a be repealed; that section one, article one of said chapter eighteen-a be amended and reenacted; that sections five and six, article two of said chapter eighteen-a be amended and reenacted; that sections two, three, seven, eight and eight-a, article four of said chapter eighteen-a be amended and reenacted; that section four-a, article five of said chapter eighteen-a be amended and reenacted; that article nine-a, chapter eighteen of said code be amended by adding thereto two new sections, designated sections twenty-one and twenty-two; and that sections two, three, four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen, article nine-a, chapter eighteen of said code be amended and reenacted, all to read as follows:
Chapter 18A. School Personnel.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one of chapter eighteen shall be applicable to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" shall mean all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: professional personnel and service personnel.

(b) "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the state, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher": The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.

(2) "Principal": The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the school and all school activities involving pupils, teachers and other school personnel.
(3) "Supervisor": The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator": The superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" shall mean that person from another profession who is properly licensed and is employed to serve the public schools and shall include a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

(e) "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch, and as aides.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel.

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-5. Employment of service personnel.

The board is authorized to employ such service personnel as is deemed necessary for meeting the needs of the county school system. Before entering upon their duties such personnel shall execute with the board a written contract which may be in letter form and shall state the classification and terms of work, the employment period and pay, and shall certify that said employment has been made a matter of minute record. The letter shall provide space for an acceptance provision and shall be signed and returned to the board by the employee, or otherwise he shall forfeit his right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and trained for
14 teacher-aide classifications, such as monitor aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal and teachers to whom assigned.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, or by written resignation of the employee before that date. The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries.
§18A-4-3. Salary increments for principals.
§18A-4-7. Substitute teachers' pay.
§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
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On and after the first day of July, one thousand nine hundred eighty-one, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this article, and any county supplement in effect in a county during the contract year.

§18A-4-3. Salary increments for principals.

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 eighty-one.

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§18A-4-7. Substitute teachers' pay.

The pay of a substitute teacher shall not be less than eighty-five percent of the daily rate of the state basic salary.
paid to teachers: Provided, That any substitute teacher who
1 teaches in excess of five consecutive instructional days in the
2 same position shall, thereafter, not be paid less than
3 eighty-five percent of the daily rate of the state advanced
4 salary to which his teaching experience entitles him:
5 Provided, however, That any substitute teacher who teaches
6 in excess of thirty days in the same position shall be paid the
7 daily rate of the advanced salary, within his county, to which
8 his teaching experience entitles him, retroactive to the sixth
9 day of employment.

§18A-4-8. Employment term and class titles of service
1 personnel; definitions.
2 The purpose of this section is to establish an employment
3 term and class titles for service personnel. The employment
4 term for service personnel shall be no less than ten months, a
5 month being defined as twenty employment days: Provided,
6 That the county board of education may contract with all or
7 part of these personnel for a longer term. The beginning and
8 closing dates of the ten-month term shall not exceed
9 forty-three weeks. Service personnel employed on a yearly or
10 twelve-month basis may be employed by calendar months.
11 Whenever there is a change in job assignment during the
12 school year, the minimum pay scale and any county
13 supplement shall be applicable.
14 Service personnel employed in the same classification for
15 more than the two hundred day minimum employment term
16 shall be paid for additional employment at a daily rate of not
17 less than the daily rate paid for the two hundred day
18 minimum employment term.
19 No service employee, without his agreement, shall be
20 required to report for work more than five days per week and
21 no part of any working day may be accumulated by the
22 employer for future work assignments, unless the employee
23 agrees thereto.
24 Custodians required to work a daily work schedule that is
25 interrupted, that is, who do not work a continuous period in
26 one day, shall be paid additional compensation which shall be
27 equal to at least one eighth of their total salary as provided by
28 their state minimum salary and any county pay supplement,
29 and payable entirely from county funds.
Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in sections four and five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

"Class title" means the name of the position or job held by service personnel.

"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.
"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate.

"Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at a higher educational institution.

"Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

"Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

"Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture.

"Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be
responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Computer operator” means qualified personnel employed to operate computers.

“Cook I” means personnel employed as a cook’s helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a “Cook I” for a period of four years, if such personnel have not been elevated to this classification within that period of time.

“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not
defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators as in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foreman” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or
other materials in windows and doors and to do minor carpentry tasks.

"Graphic artist" means personnel employed to prepare graphic illustrations.

"Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

"Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system.

"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

"Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.
“Maintenance clerk” means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

“Mason” means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

“Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.
“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

“Secretary I” means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. His responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures, mechanical and electrical equipment of a board of education.
“Supervisor of transportation” means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

“Switchboard operator-receptionist” means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

“Truck driver” means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

“Warehouse clerk” means personnel employed to be responsible for receiving, storing, packing and shipping goods.

“Watchman” means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

“Welder” means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee’s hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, these county schedules to be uniform.
throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Uniformity shall apply to any additional salary increments or compensation for all persons performing like assignments and duties within the county.

In establishing such local salary schedules, no county, after the first day of July, one thousand nine hundred eighty-one, shall reduce the amount of money that is the difference between the existing state minimum pay scale and the county's pay scale as of the first day of January, one thousand nine hundred eighty-one, except that a county's pay scale may be reduced when such pay scale is provided from excess levy funds and such excess levy is not renewed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.

No service employee, without his written consent, may be reclassified by class title or relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year.
Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court.

The new provisions of this section shall become effective the first day of July, one thousand nine hundred eighty-one.

§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

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CLASS TITLE

<table>
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<td>D</td>
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<td>F</td>
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</tbody>
</table>

For the class titles, the pay grade is determined by the years of employment.
10 Cabinetmaker ........................................... G
11 Cafeteria Manager ................................... D
12 Carpenter I ............................................. E
13 Carpenter II .......................................... F
14 Chief Mechanic ........................................ G
15 Clerk I .................................................. B
16 Clerk II ................................................ C
17 Computer Operator ...................................... E
18 Cook I .................................................. A
19 Cook II ................................................ B
20 Cook III ................................................ C
21 Crew Leader ............................................ F
22 Custodian I ............................................. A
23 Custodian II ........................................... B
24 Custodian III .......................................... C
25 Custodian IV ........................................... D
26 Director or Coordinator of Services .................. H
27 Draftsman ................................................ D
28 Electrician I ............................................. F
29 Electrician II ........................................... G
30 Electronic Technician I ................................ F
31 Electronic Technician II ................................ G
32 Executive Secretary ..................................... G
33 Food Services Supervisor .............................. G
34 Foreman .................................................. G
35 General Maintenance .................................... C
36 Glazier ................................................... D
37 Graphic Artist ........................................... D
38 Groundsman ............................................. B
39 Handyman ............................................... B
40 Heating and Air Conditioning Mechanic I ............... E
41 Heating and Air Conditioning Mechanic II .............. G
42 Heavy Equipment Operator ............................. E
43 Inventory Supervisor .................................... D
44 Key Punch Operator ..................................... B
45 Locksmith ............................................... G
46 Lubrication Man ......................................... C
47 Machinist ............................................... F
48 Maintenance Clerk ...................................... C
49 Mason .................................................... G
50 Mechanic ............................................... F
51 Mechanic Assistant ...................................... E
On and after the first day of July, one thousand nine hundred seventy-nine, the minimum monthly pay for each 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 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.

Any service employee required to work on any legal holiday shall be paid at a rate one and one-half times his usual hourly rate.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-4a. Educational or service meetings.

A county board of education may approve the attendance of any or all service personnel at educational conventions, conferences, or school service meetings of service personnel
on school days when in the judgment of the superintendent it
is necessary or desirable. Attendance at such meetings may
be substituted for an equal amount of employment and
service personnel so attending shall not suffer loss of pay.
Further, the board is authorized to pay all or any part of
expenses of any personnel whom it may designate to
represent the board at any such educational conventions,
conferences or school service meetings or in visitation to
another school system.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


§18-9A-3. Total state basic foundation program.

§18-9A-4. Foundation allowance for professional educators.

§18-9A-5. Foundation allowance for service personnel.

§18-9A-6. Foundation allowance for fixed charges.

§18-9A-7. Foundation allowance for transportation.


§18-9A-9. Foundation allowance for other current expense and substitute em-
ployees.

§18-9A-10. Foundation allowance to improve instructional programs.


1. For the purpose of this article:

2. “State board” means the West Virginia board of education.

3. “County board” or “board” means a county board of
education.

4. “Professional salaries” means the state legal-mandated
salaries of the professional educators as provided in article
four, chapter eighteen-a of this code.

5. “Professional educator” shall be synonymous with and
shall have the same meaning as “teacher” as defined in
section one, article one, chapter eighteen of this code.

6. “Professional instructional personnel” means a
professional educator whose regular duty is as that of a
classroom teacher, librarian or counselor. A professional
educator having both instructional and administrative or
other duties shall be included as professional instructional
personnel for that ratio of the school day for which he is
assigned and serves on a regular full-time basis in appropriate
instruction, library or counseling duties.

"Service personnel salaries" shall mean the state
legally-mandated salaries for service personnel as provided in
section eight-a, article four, chapter eighteen-a of the code.

"Service personnel" shall mean all personnel as provided
for in section eight, article four, chapter eighteen-a of this
code. For the purpose of computations under this article of
ratios of service personnel to adjusted enrollment, a service
employee shall be counted as that number found by dividing
his number of employment days in a fiscal year by two
hundred: Provided, however, That the computation for any
such person employed for three and one-half hours or less per
day as provided in section eight-a, article four, chapter
eighteen-a of this code, shall be calculated as one half an
employment day.

"Net enrollment" means the number of pupils enrolled in
special education programs, early childhood programs and
grades one to twelve, inclusive, of the public schools of the
county.

"Adjusted enrollment" means the net enrollment plus
twice the number of pupils enrolled for special education, all
adjusted to the equivalent of the instructional term and in
accordance with such eligibility requirements and
regulations as established by the state board, but no pupil
shall be counted more than once by reason of transfer within
the county or from another county within the state, and no
pupil shall be counted who attends school in this state from
another state.

"Levies for general current expense purposes" means on
each hundred dollars of valuation, twenty-two and five-tenths
cents on Class I property, forty-five cents on Class II
property, and ninety cents on Classes III and IV property.

"Average expenditure per pupil" for the state and the
several counties means the total of (a) expenditures from, (b)
transfers from and (c) current year outstanding obligations of
a county's current expense fund budget plus (d) current
year's property tax revenues collected for the permanent
improvement fund minus (a) any expenditure, transfer or
current year's outstanding obligation of federal funds and (b)
revenues from increased levies approved by voters as
provided in section ten, article X of the constitution of West
Virginia in the current expense fund which net expenditure
found is divided by the number of students in adjusted
enrollment. The data used for such computation shall be that
of the second preceding school year.

§ 18-9A-3. Total state basic foundation program.

1 The total basic foundation program for the state for any
year shall be the sum of the computed costs for the counties
in aggregate, as hereinafter determined, for the following:

4 (1) Allowance for professional educators;
5 (2) Allowance for service personnel;
6 (3) Allowance for fixed charges;
7 (4) Allowance for transportation cost;
8 (5) Allowance for administrative cost;
9 (6) Allowance for other current expense and substitute
10 employees; and
11 (7) Allowance to improve instructional programs.

§ 18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
professional educators shall be the amount of money
required to pay the state minimum salaries, in accordance
with provisions of article four, chapter eighteen-a of the code,
to such personnel employed: Provided, That in making this
computation no county shall receive an allowance for such
personnel which number is in excess of fifty-five professional
educators to each one thousand students in adjusted
enrollment: Provided, however, That any county not
qualifying under the provision of section fourteen of this
article shall be eligible for a growth rate in professional
personnel in any one year not to exceed twenty percent of its
total potential increase under this provision, except that in no
case shall such limit be fewer than five professionals:
Provided further, That the number of and the allowance for personnel paid in part by state and county funds shall be prorated: And provided further, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for such school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that such personnel shall be considered within the above-stated limit: And provided further, That in the school year beginning the first day of July, one thousand nine hundred eighty-two, and for each succeeding school year each county board shall establish and maintain a minimum ratio of forty-nine professional instructional personnel per one thousand students in adjusted enrollment and any county board which does not establish and maintain this minimum ratio shall suffer a prorata reduction in the allowance for professional educators under this section, and, further, any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained.

§18-9A-5. Foundation allowance for service personnel.

The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of the code, to such service personnel employed: Provided, That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment; for any county which has in excess of thirty-four service personnel per one thousand students in adjusted enrollment, such allowance shall be computed based upon the average state minimum pay scale salary of all service personnel in such county: Provided, however, That for any county having fewer than thirty-four service personnel per one thousand students in adjusted enrollment in any one year, the number of service personnel used in making this computation may be increased the succeeding year by no more than ten percent of its total potential increase under this provision, except that in no case shall such limit be fewer
than two service personnel until the county attains the
maximum ratio set forth: Provided further, That where two or
more counties join together in support of a vocational or
comprehensive high school or any other program or service,
the service personnel for such school or program may be
prorated among the participating counties on the basis of
each one's enrollment therein and that such personnel shall
be considered within the above-stated limit.

§18-9A-6. Foundation allowance for fixed charges.

The total allowance for fixed charges shall be the sum of the
following:

(1) The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
the current social security rate of contribution; plus

(2) The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
the current rate of unemployment compensation
contribution set out in section five, article five, chapter
twenty-one-a, for employers who have been employers for
less than thirty-six months, plus the rate set out in paragraph
(b), section five, article five, chapter twenty-one-a, as long as
said additional tax shall continue; plus

(3) The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
the rate which is derived by dividing the total contributions
for workman's compensation for professional educators and
other personnel by the total of the state minimum salaries.
The computation of this rate shall be determined by using
data of the most recent year for which available.


The allowance in the foundation school program for each
county for transportation shall be the sum of the following
computations:

(1) Eighty percent of the transportation cost within each
county for maintenance, operation and related costs,
exclusive of all salaries;
(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That such premiums were procured through competitive bidding;

(3) An amount equal to eleven and one-tenth percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses: Provided, That the percentages used shall be twelve percent for the school year beginning the first day of July, one thousand nine hundred eighty-two, and twelve and five-tenths percent for the school year beginning on the first day of July, one thousand nine hundred eighty-three and thereafter;

(4) Eighty percent of the cost of contracted transportation services and public utility transportation with each county; and

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county.

The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one third above the computed state average allowance per mile multiplied by the total mileage in the county.


The allowance for administrative cost shall be equal to seven-tenths of one percent of the allocation for professional educators, as determined in section four of this article. Distribution of the computed allowance shall be made to the counties in equal amounts.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

The total allowance for other current expense and substitute employees shall be the sum of the following:

(1) For current expense, four percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article. Distribution to the counties shall be made proportional to adjusted enrollment; plus
(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators as determined in section four of this article. Distribution to the counties shall be made proportional to the total county allocation for professional educators; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the total county allocation for service personnel.

§ 18-9A-10. Foundation allowance to improve instructional programs.

Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-two, funds which accrue from allocations due to increase in total local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-one, from balances in the general school fund, or from appropriations for such purpose shall be allocated to increase state support of counties as follows:

Twenty percent of the accrued funds shall be allocated to the counties proportional to adjusted enrollment and eighty percent of the accrued funds shall be allocated according to the following plan for progress toward and to basic pupil-expenditure equity.

Beginning with the county which has the lowest average expenditure per pupil and progressing through the counties successively to and beyond the county with the highest average expenditure per pupil, the funds available shall be allocated in amounts necessary to increase moneys available to the county or counties to the expenditure per pupil level, as nearly as is possible, of the county having the next higher expenditure per pupil: Provided, That to be eligible for its allocation under this section, a county board shall lay the maximum regular tax rates set out in section six-c, article eight, chapter eleven of this code: Provided, however, That moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for
instructional improvement which the affected county boards shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided further, That no part of this allocation may be used to employ professional educators in counties until and unless all applicable provisions of sections four and fourteen of this article have been fully utilized. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.


(a) On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

Effective the first day of July, one thousand nine hundred eighty-two, fifty-five percent of the amount so determined shall be added to the ninety-seven and one-half percent of public utility taxes computed as provided above and this total shall be the local share of the particular county.
(b) The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal property which shall be based upon true and actual value as set forth in article three, chapter eleven of this code. In determining the value of personal property—other than all machinery, equipment, furniture and fixtures of any industrial plant, mine, quarry or installation and of any commercial, industrial or professional establishment—the tax commissioner shall prescribe accepted methods of determining such values. The tax commissioner shall in accordance with such methods determine the value of such property.

For the purpose of appraising commercial, industrial and professional properties, the tax commissioner, after consultation with the county commission, may employ a competent property appraisal firm or firms, which appraisals shall be under his supervision and direction.

In making or causing to be made such appraisal, the tax commissioner shall employ such assistance as available appropriations will permit and shall prescribe and use such accepted methods and procedures for checking property values and determining the amount of property in the several classes of property provided by law as are customarily employed for appraisal purposes.

(c) Such appraisal of all said property in the several counties shall be completed prior to the first day of July, one thousand nine hundred sixty-seven. Each year after the completion of the property appraisal in a county the tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications, and shall determine the appraised value thereof. On the basis of information so ascertained, the tax commissioner shall annually revise his reports to the Legislature and to the state board concerning such appraisals, such reports to be made not later than the first day of January of each year.

(d) The tax commissioner shall prescribe appropriate
methods for the appraisal of the various types of property subject to taxation as public utilities and the types of property which are to be included in the operating property of a public utility and thereby not subject to taxation by the county assessor. Only parcels or other property, or portions thereof, which are an integral part of the public utility's function as a utility shall be included as operating property.

(e) As information from such appraisal of property in a county under the provisions of this section becomes available for a district, municipality and county, the tax commissioner shall notify the county commission and the assessor of said county that such information is available and shall make available to said county commission and assessor all data, records and reports or other information relating to said work, along with a list of any properties in said district, municipality and county which are entered on the assessment rolls but for which no appraisal has been made, a list of any properties which were appraised but which cannot be found on the assessment rolls and a list of all properties carried on the assessment rolls which have not been identified on the map. Said list shall set forth the name of the owner and a description of the property and the reason, if known, for its failure to have been entered on the assessment rolls or to have been appraised or to have been identified on the map, as the case may be.

(f) As such appraisal of property in a county, under this section, is completed to the extent that a total valuation for each class of property can be determined, such appraisal shall be delivered to the assessor and the county commission, and in each assessment year commencing after such appraisal is so delivered and received, the county assessor and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property. The total assessed valuation in each of the four classes of property shall not be less than fifty percent nor more than one hundred percent of the appraised valuation of each said class of property: Provided, however, That beginning July one, one thousand nine hundred eighty-one, the total assessed valuation in each of the four classes of property shall not be less than sixty percent of the appraised valuation of each said class of property.
Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of chapter eleven of this code and this section, and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make such corrections shall constitute grounds for removal from office.

In any year in which the total assessed valuation of a county shall fail to meet the minimum requirements above set forth, the county commission of such county shall allocate for such year to the county board of education from the tax levies allowed to the county commission a sufficient portion of its levies as will, when applied to the valuations for assessment purposes of such property in the county, provide a sum of money equal to the difference between the amount of revenue which will be produced by application of the allowable school levy rates defined in section two of this article upon the valuations for assessment purposes of such property and the amount of revenue which would be yielded by the application of such levies to fifty percent of the total of appraised valuations of such property. In the event the county commission shall fail or refuse to make the reallocation of levies as provided for herein, the county board of education, the tax commissioner, the state board, or any other interested party, shall have the right to enforce the same by writ of mandamus in any court of competent jurisdiction.

In conjunction with and as a result of the appraisal herein set forth the tax commissioner shall have the power, and it shall be his duty, to establish a permanent records system for each county in the state, consisting of:

Tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is
improved, and identify the respective parcels or lots by a
system of numbers or symbols and numbers, whereby the
ownership of such parcels and lots can be ascertained by
reference to the property record cards and property owner's
index;

(2) Property record cards arranged geographically
according to the location of property on the tax maps, which
cards shall set forth the location and description thereof, the
acreage or dimensions, description of improvements, if any,
the owner's name, address and date of acquisition, the
purchase price, if any, set forth in the deed of acquisition, the
amount of tax stamps, if any, on the deed, the assessed
valuation, and the identifying number or symbol and
number, shown on the tax map; and

(3) Property owner's index consisting of an alphabetical
listing of all property owners, setting forth brief descriptions
of each parcel or lot owned and cross-indexed with the
property record cards and the tax map.

(j) The tax commissioner is hereby authorized and
empowered to enter into such contracts as may be necessary,
and for which funds may be available, to establish the
permanent records system herein provided for, or may
through his staff and employees, prepare and complete such
system.

All microfilm photography and original copies of tax maps
created under the provisions of this section are the property
of the state of West Virginia and the reproduction, copying,
distribution or sale of such microfilm, photography or tax
maps or any copies thereof without the written permission of
the state tax commissioner is prohibited. Any person who
shall violate the provisions of this paragraph shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be fined
not less than fifty dollars nor more than three hundred
dollars, or imprisoned in the county jail not less than thirty
days nor more than one year, or both fined and imprisoned.
Magistrates shall have concurrent jurisdiction with other
courts having jurisdiction for the trial of all misdemeanors
arising under this paragraph.

The tax commissioner shall by uniform regulations
establish a procedure for the sale of reproduction of microfilm, photography and maps and may pay for having such reproductions made from the appropriation for "property appraisal." Any funds received as a result of the sale of such reproductions shall be deposited to the appropriated account from which the payment for reproduction is made.

(k) The cost of conducting the appraisal herein provided for shall be borne jointly by the state and the several counties in the following manner and terms: There shall be appropriated from the general revenue fund annually an amount sufficient to maintain the appraisal in all counties of the state. Each county shall furnish, through its county commission, not more than ten percent of the cost of such appraisal or reappraisal and permanent records system for each county. Such county costs may be paid over a period of three years with the approval of the tax commissioner. In those instances where the cost of the appraisal, reappraisal or permanent records system required by this section has been paid by the tax commissioner from funds appropriated for these purposes, the share of such cost allocated to each county shall, upon receipt thereof by the tax commissioner, be deposited to the appropriated account from which such payments have been made. In those instances where a county has heretofore employed a professional appraisal firm to conduct an appraisal or reappraisal of all or part of nonutility property within the past seventeen years, and such appraisal has been accepted by the tax commissioner, with the county having borne in excess of ten percent of the cost of such appraisal, reappraisal, and permanent records system, monetary reimbursement of one third of such excess costs shall be made by the tax commissioner from funds appropriated for such purpose, to such county, yearly, for a period of three years, in order to establish the joint sharing of such costs as hereinbefore set forth.

(l) The county assessor and the county commission shall comply with the provisions of chapter eleven of this code in determining the true and actual value of property for assessment purposes and shall not arbitrarily use a direct percentage application to the appraisal valuations, whether complete appraisal or spot survey, of any class of property or property within a class for such purposes.
(m) The provisions of this section shall not be construed to alter or repeal in any manner the provisions of chapter eleven of this code, but shall be construed in pari materia therewith and compliance with this section by the assessor and county commission shall be considered, pro tanto, as compliance with said chapter eleven.


For the fiscal year beginning on the first day of July, one thousand nine hundred eighty-one, and for the next four fiscal years, there shall be an allowance for loss reduction which shall be distributed as provided in this section.

In order to determine which counties are entitled to such allowance, and the amount of such allowance, the state board shall first compute the amount to be received by each county from the regular state aid appropriation for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-one, allocated as provided in section twelve of this article. The state board shall then compare such amount with the state aid which each such county would have received from the plan in effect during the fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one. The state board shall then compute the amount of each county's salary increase for professional educators and for service personnel to which it adds an amount for fixed charges computed as provided in section six of this article and the increase allowed for bus fleet replacement. The state board shall then determine which counties' salary increase plus allocated fixed charges and increase allowed for bus fleet replacement exceeds the difference in state aid from the cited years and the amount of this excess found shall be allocated to the affected counties from funds appropriated for this purpose for the fiscal years beginning the first day of July, one thousand nine hundred eighty-one, eighty-two, eighty-three, eighty-four and eighty-five.


(a) In order to encourage counties to move toward new and improved programs and to reduce class size, counties having ratios of adjusted enrollment to professional staff higher than the state average will be granted advance funds to employ sufficient additional staff to reach the state average:
Provided, That in any one fiscal year no more than one half of such additional staff may be counted under this provision. Such funds shall be granted to each eligible county based on data at the end of the second month of school but only on the basis of actual staff members employed.

(b) Counties having ratios of adjusted enrollment to service personnel higher than the state average will be granted funds to employ service personnel to progress toward the state average: Provided, That in any fiscal year the number of service personnel for which funds are allocated shall not exceed that number of service personnel by which the counties' computations for allocations may be increased as provided in section five of this article.


(a) The Legislature finds that continual evaluation, long-term planning, maintenance and improvement of educational facilities on the basis of need on a statewide level is necessary to provide for a thorough and efficient system of free schools; and that the Legislature is in need of information relative to alternative approaches for the financing of a comprehensive, ongoing program of facility construction and renovation.

(b) There shall be established within the state department of education a division of facilities planning which shall be responsible for the planning of school facility construction and renovation on a statewide basis. Such division shall: (1) study alternative approaches to the financing of an ongoing, comprehensive program of school facility construction and renovation; (2) establish standards and criteria for the construction of educational facilities; (3) assess the facility needs of each county and update the same as appropriate; (4) establish procedures for the allocation of projects on the basis of need upon receipt of, and to the extent of, funding for such purposes; (5) provide professional planning and assistance to improve, expand or maintain school facilities on a statewide basis. The division shall employ an architect or such other professional, technical and support staff as are necessary to carry out the purposes of this section.

(c) The state board of education shall submit a report to
the Legislature on or before the fifteenth day of January, one thousand nine hundred eighty-two, proposing alternative methods for financing an ongoing comprehensive program of facilities construction on the basis of need. The division of facilities planning shall provide an annual report of its assessments and recommendations to the state board of education.


On or before January one, one thousand nine hundred eighty-two, the state board of education shall establish and adopt standards for quality education and shall provide each county board of education a copy thereof.

On or before July one, one thousand nine hundred eighty-two, and each July one thereafter, each county board of education shall file an annual specific program plan with the state department of education. The program plan shall, at a minimum, meet the statewide standards for educational quality as established by the state board of education.

The purpose of the program plan is to allow county boards of education flexibility in developing school improvement programs structured around locally identified needs, but in compliance with the standards adopted by the state board of education. Standards must be met in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications and other such areas as determined by the state board of education.

The state department of education shall review the plans annually and conduct an on-site review of each county's educational program every fourth year. The state board of education shall have authority to issue three types of recognition status: (1) full approval, (2) probationary and (3) nonapproval.

Full approval status may be granted to a county board of education whose educational program has undergone an on-site evaluation by representatives of the state department of education and has met the minimal standards adopted by the state board of education. Full approval status shall be for a period not to exceed four years.

Probationary status is given to a county board of education
whose educational program has not met the minimal standards. Probationary status is a warning that the county board of education must make specified improvements. If progress is not made toward meeting the minimum standards during the succeeding year, the county board of education is automatically placed on nonapproval status.

Nonapproval status is given to a county board of education which fails to submit an annual program plan, fails to give evidence of meeting the minimal standards or has not demonstrated a reasonable effort to meet such standards.

If a county board of education receives nonapproval status for two years in succession, the state board of education shall reduce public school support as provided under this article by three percent during the second year and thereafter as long as the county board of education is on nonapproval status.

AN ACT to amend and reenact sections nine and ten, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse racing generally; the commissions deducted by licensees from pari-mutuel pools; the daily license tax and pari-mutuel pools tax of racetracks; and requiring certain certified financial statements from associations or licensees to be submitted to the racing commission and the Legislature annually.

Be it enacted by the Legislature of West Virginia:

That sections nine and ten, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;

COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system for wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by such licensee within the confines of such licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of such licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

1. The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this subdivision, the licensee shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the
months of January, February, March, October, November and December shall be seven and seventy-five one-thousandths percent of such pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be six and five hundred seventy-five one-thousandths percent of such pari-mutuel pools, and shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses, shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this paragraph, the licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving a combination of two winning horses shall be seven and ninety-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and forty-five one-hundredths percent of such pari-mutuel pools involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of such fund shall be ten and ninety-five one-hundredths percent of such pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be ten and forty-five one-hundredths percent of such pari-mutuel pools, and (iii) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The
remainder of the commission shall be retained by the licensee.

The commission deducted by the licensee under subdivision (1), subsection (b) of this section may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. Such reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of such reduction shall be retained by licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of subdivision (1), subsection (b) of this section. The racing commission shall promulgate such reasonable rules and regulations as are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article, and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article. The remainder of the commission shall be retained by the licensee.

(c) In addition to any such commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from such breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of such breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section, for the payment of regular purses.
(d) The director of audit, and any other auditors employed by the racing commission who shall also be certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that such individual is under the age of eighteen years.

(f) Notwithstanding any other provisions of this section to the contrary, the provisions of this section in effect on the first day of July, one thousand nine hundred eighty, shall continue in effect until and through the thirtieth day of September, one thousand nine hundred eighty-one.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one
daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article, which tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December shall be calculated at three percent of such pools, and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at four percent of such pools: Provided, That any such racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of one hundred fifty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as hereinbefore in this subsection provided, be permitted to conduct pari-mutuel wagering at such horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding one hundred fifty thousand dollars the daily pari-mutuel pool tax shall be four thousand dollars plus five and three-fourths percent of the daily pari-mutuel pool, if any, in excess of one hundred fifty thousand dollars.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one
(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of such pari-mutuel pools, five percent of the next fifty thousand dollars of such pari-mutuel pools, six percent of the next one hundred thousand dollars of such pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of such pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Notwithstanding any other provisions of this section to the contrary, the provisions of this section in effect on the first day of July, one thousand nine hundred eighty, shall continue in effect until and through the thirtieth day of September, one thousand nine hundred eighty-one.

Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten hereof, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement and statement of change in financial position, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.
AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the members of the public service commission in light of new, substantial additional duties embracing new areas and fields of activity under certain specified legislative enactments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman, compensation.

(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) Effective the first day of July, one thousand nine hundred seventy-nine, for the administration of this chapter, chapter twenty-four-a and 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.

Effective the first day of July, one thousand nine hundred eighty-one, and in light of the new, substantial additional duties embracing new areas placed upon the commission by Enrolled Senate Bill No. 95, Enrolled Senate Bill No. 571, and Enrolled House Bill No. 1479, all acts of the Legislature, regular session, one thousand nine hundred eighty-one, 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-six 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-eight thousand one hundred 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, seven thousand 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 four hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three 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, on and
100 after the first day of July, one thousand nine hundred eighty-one.

CHAPTER 8

(H. B. 113—By Mr. Speaker, Mr. See)

[Passed May 5, 1981; in effect July 1, 1981. Approved by the Governor.]

AN ACT to repeal section eighteen, article seventeen; and section eight, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fifteen, article fourteen; and section thirteen, article fourteen-a of said chapter, all relating to disposition of collected gasoline and special fuel excise tax and motor carrier road tax; and deleting authority for the tax commissioner to expend out of collected gasoline and special fuel excise taxes, motor carrier road taxes, cigarette taxes and soft drinks taxes his costs for administration and enforcement thereof.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article seventeen; and section eight, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fifteen, article fourteen; and section thirteen, article fourteen-a of said chapter, be amended and reenacted, all to read as follows:

Article


14A. Motor Carrier Road Tax.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-15. Disposition of tax collected.

1 All tax collected under the provisions of this article shall be
2 paid into the state treasury and shall be used only for the
3 purpose of construction, reconstruction, maintenance and re-
TAXATION

4 pair of highways, and payment of the interest and sinking fund
5 obligations on state bonds issued for highway purposes.

6 Unless necessary for such bond requirements, five four-
7 teenths of the tax collected under the provisions of this article
8 shall be used for feeder and state local service highway pur-
9 poses.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.


1 All tax collected under the provisions of this article shall
2 be paid into the state treasury and shall be used only for the
3 purpose of construction, reconstruction, maintenance and re-
4 pair of highways, payment of the interest and sinking fund
5 obligations on state bonds issued for highway purposes.

6 Unless necessary for such bond requirements, five four-
7 teenths of the tax collected under the provisions of this article
8 shall be used for feeder and state local service highway pur-
9 poses.

CHAPTER 9

(Com. Sub. for S. B. 7—by Mr. Palumbo and Mr. Davis)

[Passed May 14, 1981; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen-a,
chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend said article
fourteen-a by adding thereto a new section, designated section
seven-a, relating to motor carrier road tax; required
registration cards and identification markers; increasing fee;
emergency authorization without registration; penalty for
violation; imposition of surtax; provisions for implementation,
exemptions from surtax, and and collection thereof; and
specifying effective dates.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-7. Registration cards and identification markers.

§11-14A-7a. Motor carrier road surtax.

§11-14A-7. Registration cards and identification markers.

1 No person shall operate or cause to be operated in this state any motor carrier subject to this article without first securing from the commissioner a registration card and an identification marker for each such motor carrier. The registration card shall be of such form, design and color as the commissioner shall prescribe, but the commissioner shall provide on such registration card a place for the declared gross weight or the combined declared gross weight of the motor carrier and such declared gross weight and the combined declared gross weight shall be as defined in section two, article ten, chapter seventeen-a. The registration card shall be carried in the motor carrier for which it was issued at all times when the motor carrier is within the state. Each identification marker for a particular motor carrier shall bear a number, which number shall be the same as that appearing on the registration card for that particular motor carrier. The identification marker shall be displayed on the motor carrier as required by the commissioner. The registration card and identification markers herein provided for shall be valid for the period of one year, ending June thirty of each year. A fee of one dollar shall be paid to the commissioner for issuing each registration card and identification marker: Provided, That for registration years beginning on and after the first day of July, one thousand nine hundred eighty-two, the fee shall be five dollars. All tax or reports due under this article shall be paid or reports filed before the issuance of a new registration card and identification marker. Failure by a taxpayer to file the returns or pay the taxes imposed by this article shall give cause to the commissioner to revoke or
refuse to renew the registration card and identification
marker previously issued.

In an emergency, the commissioner upon request may
authorize, in writing, a motor carrier to be operated without a
registration card or an identification marker for not more
than ten days.

Upon conviction for failure to obtain, carry and display the
registration card and identification marker in or on each
motor carrier, the person which operates or causes to be
operated said motor carrier shall be fined not less than twenty
nor more than one hundred dollars per day; and each day of
such failure shall constitute a separate offense.

§11-14A-7a. Motor carrier road surtax.

Effective for registration years beginning after June
thirtieth, one thousand nine hundred eighty-two, every
person who operates or causes to be operated in this state any
motor carrier subject to this article shall pay an annual tax on
each motor carrier operated in this state which tax shall be
based on gross vehicle weight as follows:

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<th>COMBINED GROSS VEHICLE WEIGHT</th>
<th>TAX RATE PER VEHICLE</th>
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<td>8,001 or over</td>
<td>5.00</td>
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</table>

The tax collected hereunder shall be in addition to any other
taxes and fees imposed under this chapter. Such additional
tax shall be due and payable, reported and remitted as
elsewhere provided in this article for the registration fee
imposed by section seven: Provided, That recreational and/or
farm vehicles shall be exempt from the provisions of this
section: Provided, however, That the credit set forth in
section nine of this article shall not be applicable to the surtax
imposed in this section.

Each and every provision of the “West Virginia Tax
Procedure and Administration Act” set forth in article ten of
this chapter shall apply to the tax imposed under this section
with like effect as if such act were applicable only to the tax
imposed by this section.
AN ACT to amend and reenact sections three and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two and three, article fifteen-a of said chapter, all relating to increasing the consumers sales tax and use tax except for mobile homes.

Be it enacted by the Legislature of West Virginia:

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

Article
15. Consumers Sales Tax.
15A. Use Tax.

ARTICLE 15. CONSUMERS SALES TAX.


1 For the privilege of selling tangible personal property and
2 of dispensing certain selected services defined in sections
3 two and eight of this article, the vendor shall collect from the
4 purchaser the tax as provided under this article, and shall pay
5 the amount of tax to the tax commissioner in accordance with
6 the provisions of this article.

7 There shall be no tax on sales where the monetary
8 consideration is five cents or less. The amount of the tax shall
9 be computed as follows:

10 (1) On each sale, where the monetary consideration is
11 from six cents to twenty cents, both inclusive, one cent.

12 (2) On each sale, where the monetary consideration is
13 from twenty-one cents to forty cents, both inclusive, two
14 cents.
(3) On each sale, where the monetary consideration is from forty-one cents to sixty cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from sixty-one cents to eighty cents, both inclusive, four cents.

(5) On each sale, where the monetary consideration is from eighty-one cents to one dollar, both inclusive, five cents.

(6) If the sale price is in excess of one dollar, five cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars, as follows: One cent on the fractional part of the dollar if less than twenty-one cents; two cents on the fractional part of the dollar if in excess of twenty cents but less than forty-one cents; three cents on the fractional part of the dollar if in excess of forty cents but less than sixty-one cents; four cents on the fractional part of the dollar if in excess of sixty cents but less than eighty-one cents; and five cents on the fractional part of the dollar if in excess of eighty cents. For example, the tax on sales from one dollar and one cent to one dollar and twenty cents, both inclusive, six cents; on sales from one dollar and twenty-one cents to one dollar and forty cents, both inclusive, seven cents; on sales from one dollar and forty-one cents to one dollar and sixty cents, both inclusive, eight cents; on sales from one dollar and sixty-one cents to one dollar and eighty cents, both inclusive, nine cents; on sales from one dollar and eighty-one cents to two dollars, both inclusive, ten cents.

Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. Notwithstanding any other provision, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.


The following sales and services shall be exempt:

(1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;
(2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

(3) Sales of textbooks required to be used in any of the schools of this state;

(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;

(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;

(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 contracting, 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 representatives;

(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;
Ch. 10] Taxation 1335

(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; and

(19) Sales of mobile homes to be utilized by purchasers as
their principal year-round residence and dwelling: Provided,
That these mobile homes shall be subject to tax at the three
percent rate.

ARTICLE 15A. USE TAX.


An excise tax is hereby imposed on the use in this state of
tangible personal property furnished or delivered within this
state to consumers or users within this state on or after the
effective date of this article, at the rate of five percent of the
purchase price of such property. Said tax is hereby imposed
upon every person using such property within this state until
such tax has been paid directly to a retailer, or to the state tax
commissioner as hereinafter provided.

Purchases of tangible personal property made from the
government of the United States or any of its agencies by
ultimate consumers shall be subject to the tax imposed by
this section. Industrial materials and equipment owned by
the federal government within the state of West Virginia of a
character not ordinarily readily obtainable within the state,
shall not be subject to use tax when sold, if such industrial
materials and equipment would not be subject to use tax if
such were sold outside of the state for use in West Virginia.

This article shall not apply to purchases made by counties
or municipal corporations.


The use in this state of the following tangible personal
property is hereby specifically exempted from the tax
imposed by this article:

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.

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.

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.

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.

6. Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three percent rate.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the State Department of Highways, Account No. 6410, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive message, dated May 27, 1981, which included a current financial statement of the state fund, general revenue; and

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

Be it enacted by the Legislature of West Virginia:

That Account No. 6410, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

110 — State Department of Highways

Acct. No. 6410

1 Unclassified — Total .................. $13,000,000

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

The purpose of this supplementary appropriation is to
supplement the aforesaid account for expenditure in the
fiscal year 1981-82.

CHAPTER 2

(S. B. 2—By Mr. McGraw, Mr. President)

[Passed May 27, 1981; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money
out of the treasury from the balance of all state road funds
remaining unappropriated for the fiscal year ending June
thirty-first, one thousand nine hundred eighty-two, to the State
Department of Highways, Account No. 6700, supplementing
chapter one, acts of the Legislature, first extraordinary session,
one thousand nine hundred eighty-one, known as the budget
bill.

WHEREAS, The Governor submitted to the Legislature an
executive message, dated May 27, 1981, which set forth the
revenues and expenditures of the state road fund, including fiscal
year 1981-82; and

WHEREAS, The Legislature has heretofore and during the second
extraordinary session, 1981, provided for a supplementary
appropriation of moneys from the balance of all general revenue to
the State Department of Highways, Account No. 6410, and
authorized transfer of such amount to the state road fund and
disbursement therefrom; and
WHEREAS, It appears from such executive message and the prior legislative action aforesaid in respect to Account No. 6410 and the transfer therefrom of general revenue to the state road fund that there now remains unappropriated a balance in the state road fund available for further appropriation during fiscal year 1981-1982; therefore

Be it enacted by the Legislature of West Virginia:

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

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<th>Item</th>
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<td>Maintenance Expressway, Trunkline and Feeder</td>
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<td>Maintenance State Local Services</td>
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The purpose of this bill is to supplement existing items in the aforesaid account for expenditure in the fiscal year of 1981-82 and to reflect the new total spending authority of the spending unit for such fiscal year.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1981

HOUSE BILLS

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### Disposition of Bills Enacted

#### Senate Bills

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