ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1983
Second Extraordinary Session, 1982
First Extraordinary Session, 1983
FOREWORD


First Regular Session, 1983

The first regular session of the 66th Legislature convened on January 12, 1983, and following the certification of the election of members, held at the general election on the 2nd day of November, 1982, the election of officers of the two houses, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on matters incident to organization, proceeded to the business of the session.

The constitutional expiration date of the session was midnight, March 12, 1983. However, the session was extended by proclamations of the Governor for consideration of the annual budget bill up to and including March 16, 1983. The Legislature passed the budget on March 16, 1983, and adjourned sine die on that date.

Bills totaling 1,798 were introduced in the two houses during the session (1044 House and 754 Senate). The Legislature passed 203 bills, 111 House and 92 Senate. The Governor approved 195 bills and vetoed 8 (S. B. Nos. 515, 634, 738, H. B. Nos. 1255, 1314, 1398, 1471 and 1709).

One bill (H. B. 1709) was amended and repassed by the Legislature and subsequently approved by the Governor. S. B. 515, permitting local option elections for the sale of liquor within magisterial districts, was vetoed by the Governor but was repassed by both houses of the Legislature, notwithstanding his objections, leaving a net total of six bills lost through veto. H. B. 1150, Budget Bill, was passed by the Legislature and approved by the Governor following certain deletions and reductions.

There were 77 concurrent resolutions introduced during the session, 41 House and 36 Senate, of which eight House and nine Senate were adopted. A total of 42 Joint Resolutions were introduced proposing amendments to the Constitution of the State, 39 House and 13 Senate, of which two were adopted (H. J. R. 28 and S. J. R. 3). The House had 25 House resolutions and the Senate had 49 Senate resolutions, of which 17 House and 41 Senate were adopted.
The Senate failed to pass 54 House bills passed by the House and 106 Senate bills failed passage by the House. Five bills died in conference, three House and two Senate.

Second Extraordinary Session, 1982


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

A total of 24 joint resolutions were introduced, 12 House and 12 Senate, of which one was adopted, H. J. R. 1, Property Tax Limitation and Homestead Exemption Amendment of 1982.

There were two house concurrent resolutions introduced of which one was adopted. Three House resolutions and five Senate resolutions were introduced and adopted during the session.

First Extraordinary Session, 1983


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

A total of 47 bills were introduced during the session (24 House and 23 Senate). The Legislature passed 18 bills, 13 House and five Senate, the Governor approved all bills.

There were 15 concurrent resolutions offered during the session, seven House and eight Senate, of which two House and six Senate were adopted. The House had three Joint Resolutions offered during the session of which none were adopted. The House had seven House resolutions of which six were adopted, and the Senate had six Senate Resolutions, all were adopted.

Two Senate bills passed by the Senate failed passage by the House and one House bill passed by the House failed passage by the Senate.

This volume will be distributed as provided by sections thirteen
FOREWORD

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.

DONALD L. KOPP, Clerk
House of Delegates
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ERRATA

Page 477, Chapter 102, Com. Sub. for S. B. 320, should read “in effect ninety days from passage.”

Page 975, Chapter 183, H. B. 1343, line 51, after the word “item” insert “listed. The sum of the taxes, interest to the date of sale,”.
MEMBERS OF THE SENATE

REGULAR SESSION, 1983

OFFICERS

President—Warren R. McGraw, Pineville
President Pro Tem—James L. Davis, Fairmont
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Emery Woodall, Hamlin
Doorkeeper—Aubrey R. Grizzell, St. Albans

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1 Appointed a member of the Senate December 29, 1982, to fill the vacancy created by the resignation of the Honorable Patrick McCune.
2 Appointed a member of the Senate December 15, 1982, to fill the vacancy created by the resignation of the Honorable Harley O. Staggers, Jr.
3 Appointed a member of the Senate December 10, 1982, to fill the vacancy created by the resignation of the Honorable Robert E. Wise, Jr.

(D) Democrats .................................. 31
(R) Republicans .................................. 3

Total ............................................. 34
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1913

OFFICERS

Speaker—Clyde M. See, Jr., Moorefield  
Speaker Pro Temp—Larry E. Schifano, Morgantown  
Clerk—Donald L. Kopp, Clarksburg  
Sergeant at Arms—Oce W. Smith, Jr., Fairmont  
Doorkeeper—Dannie Wingo, Yukon

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<td>Richwood</td>
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<tr>
<td>Twenty-seventh</td>
<td>Charles F. Jordan (D)</td>
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<td>Joe E. Martin (D)</td>
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<td>Twenty-eighth</td>
<td>Joe E. Miller (D)</td>
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<td>Charles R. Shaffer (R)</td>
<td>Buckhannon</td>
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<td>Twenty-ninth</td>
<td>Robert J. Conley (R)</td>
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<td>Percy C. Ashcraft II (D)</td>
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<td>Floyd Fullen (D)</td>
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<td>*Joseph M. Minard (D)</td>
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<td>Kenneth H. Riffle (D)</td>
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<td>Joe Manchin III (D)</td>
<td>Fairmont</td>
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<td>Cody A. Stacher (D)</td>
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<td>Bill Stewart (D)</td>
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<td>Benjamin N. Springston (R)</td>
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<td>Shelby (Bosley) Leary (D)</td>
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<td>Clyde Hagedorn (D)</td>
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<td>Elizabeth Martin (D)</td>
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<td>Larry E. Schifano (D)</td>
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<td>Ronald R. Brown (D)</td>
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<td>James W. Teets (R)</td>
<td>Terra Alta</td>
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<td>Marc L. Harmon (R)</td>
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<td>Stephen C. Sluss (D)</td>
<td>Fort Ashby</td>
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<td>Thirty-sixth</td>
<td>Clyde M. See, Jr. (D)</td>
<td>Moorefield</td>
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<td>Daniel L. Shanholitz (R)</td>
<td>Springfield</td>
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<td>Thirty-eighth</td>
<td>Patrick H. Murphy (D)</td>
<td>Martinsburg</td>
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<td>Thirty-ninth</td>
<td>Larry V. Faircloth (R)</td>
<td>Inwood</td>
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<td>Fortieth</td>
<td>John Doyle (D)</td>
<td>Shepherdstown</td>
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<td></td>
<td>Thomas W. Steptoe, Jr. (D)</td>
<td>Charles Town</td>
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</table>

* Appointed a member of the House of Delegates January 10, 1983, to fill the vacancy created by the resignation of the Honorable Donald L. Kopp.

(D) Democrats ........................................... 77
(R) Republicans ........................................... 13
Total .................................................. 100
STANDING COMMITTEES OF THE SENATE

Regular Session, 1983

Agriculture

Parker (Chairman), Lucht (Vice Chairman), Chace, Huffman, Rogers, Spears, Tucker, Whitacre and Jones.

Banking and Insurance

Heck (Chairman), Tucker (Vice Chairman), Chafin, Craigo, Kaufman, Loehr, Palumbo, Rogers, Tomblin, Whitacre, Williams, Harman and White.

Confirmations

Tomblin (Chairman), Kaufman (Vice Chairman), Ash, Burdette, Chace, Colombo, Davis, Loehr, Parker, Tonkovich, Tucker, Williams and Harman.

Education

Holliday (Chairman), Heck (Vice Chairman), Ash, Boettner, Burdette, Chace, Colombo, Cook, Lucht, Nelson, Palumbo, Parker, Sacco, Stacy and Jones.

Elections

Palumbo (Chairman), Rogers (Vice Chairman), Chafin, Chernenko, Colombo, Cook, Huffman, Kaufman, Parker, Sacco and White.

Energy, Industry and Mining

Cook (Chairman), Stacy (Vice Chairman), Boettner, Burdette, Chafin, Chernenko, Davis, Heck, Holmes, Kaufman, Nelson, Harman and White.

Finance

Nelson (Chairman), Loehr (Vice Chairman), Burdette, Chernenko, Colombo, Cook, Craigo, Holmes, Kaufman, Lucht, Parker, Spears, Tomblin, Tonkovich, Whitacre, Williams, Wright and Harman.

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SENATE COMMITTEES

Government Operations
Stacy (Chairman), Loehr (Vice Chairman), Boettner, Cook, Craigo, Holliday, Lucht, Nelson and Jones.

Health
Chace (Chairman), Huffman (Vice Chairman), Ash, Boettner, Cook, Craigo, Davis, Holliday, Lucht, Spears, Stacy, Williams and Jones.

Interstate Cooperation
Davis (Chairman), Palumbo (Vice Chairman), Burdette, Huffman, Spears, Wright and Harman.

Judiciary
Boettner (Chairman), Chafin (Vice Chairman), Ash, Burdette, Chase, Craigo, Davis, Heck, Holliday, Huffman, Lucht, Palumbo, Rogers, Sacco, Stacy, Tucker, Jones and White.

Labor
Holmes (Chairman), Chernenko (Vice Chairman), Heck, Holliday. Huffman, Sacco, Stacy, Wright and Jones.

Local Government
Burdette (Chairman), Sacco (Vice Chairman), Chafin, Chernenko, Holmes, Huffman, Loehr, Williams and Harman.

Military
Spears (Chairman), Colombo (Vice Chairman), Chernenko, Heck, Palumbo, Rogers, Whitacre, Harman and White.

Natural Resources
Williams (Chairman), Craigo (Vice Chairman), Colombo, Cook, Holmes, Kaufman, Lucht, Palumbo, Parker, Rogers, Sacco, Tomblin, Tucker, Whitaere and Jones.

Public Institutions
Davis (Chairman), Ash (Vice Chairman), Chace, Holliday, Holmes, Spears, Stacy, Tomblin, Whitaere, Wright and Harman.
Rules
McGraw (Chairman), Boettner, Chace, Cook, Holliday, Nelson, Palumbo, Tonkovich, Williams and Jones.

Small Business
Ash (Chairman), Wright (Vice Chairman), Burdette, Chernenko, Craigo, Lucht, Spears, Tucker and White.

Transportation
Craigo (Chairman), Whitacre (Vice Chairman), Chafin, Holmes, Huffman, Loehr, Parker, Rogers, Tomblin, Wright and White.

JOINT COMMITTEES

Enrolled Bills
Davis (Chairman), Holmes (Vice Chairman), Ash, Colombo and Harman.

Government and Finance
McGraw (Cochairman), Boettner, Nelson, Tonkovich, Williams, Harman and Jones.

Legislative Rule-Making Review
McGraw (Chairman), Boettner, Lucht, Nelson, Williams, Harman and Jones.

Rules
McGraw (Chairman ex officio), Tonkovich and Harman.

COMMISSION ON SPECIAL INVESTIGATIONS
McGraw (Chairman), Nelson, Tonkovich, Jones and White.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1983

Agriculture and Natural Resources
Neal (Chairman of Agriculture), Burke (Vice Chairman), Ballouz (Chairman of Natural Resources), Steptoe (Vice Chairman), Artrip, Bailey, Damron (15th Dist.), Doyle, Ferrell, Hutchinson, Jordan, Leary, Manchin, Meadows, McCallister, Moore, Murphy, Sluss, Starcher, Stewart, Toler, Whitlow, Harman, Shaffer and Springston.

Banking and Insurance
Gilliam (Chairman of Banking), McCormick (Vice Chairman), Riffle (Chairman of Insurance), Goff (Vice Chairman), Anello, Bird, Blatnik, Crookshanks, Damron (12th Dist.), Farley, Flanigan, Hamilton, Hartman, Love, Miller, Murensky, Roop, Schifano, Smith, Toney, Underwood (13th Dist.), Williams, Faircloth, McKinley and Shanholtz.

Constitutional Revision
Wehrle (Chairman), Dalton (Vice Chairman), Brown (23rd Dist.), Brown (33rd Dist.), Casey, Chambers, Cipriani, Damron (12th Dist.), Farley, Feinberg, Flanigan, Fullen, Hamilton, Hatcher, Humphreys, Johnson, Knight, Love, MacCorkle, Martin (27th Dist.), Martin (32nd Dist.), Neal, Harman, Otte and Rogers.

Education
Sattes (Chairman), Hartman (Vice Chairman), Ashcraft, Bailey, Brown (23rd Dist.), Cipriani, Givens, Hagedorn, Johnson, Kidd, Lewis, Meadows, McCallister, McCormick, Miller, Minard, Mullett, Murphy, Sergent, Spencer, Toler, Yanni, Conley, Rogers and Shanholtz.

Finance
Polan (Chairman), Farley (Vice Chairman), Anello, Artrip, Blatnik, Bledsoe, Burke, Childers, Dalton, Goff, Hutchinson, Jordan, Martin (32nd Dist.), Murensky, Neal, Riffle, Seacrist, Simpkins, Smith, Starcher, Toney, Wehrle, Faircloth, Nicely and Teets.
Government Organization

Wiedebusch (Chairman), Knight (Vice Chairman), Ashcraft, Ballouz, Crabtree, Doyle, Ferrell, Flanigan, Hamilton, Holt, Kelly, Leary, Love, Manchin, McCormick, Minard, Roop, Stewart, Theiling Underwood (13th Dist.), Underwood (23rd Dist.), Harman, McKinley and Otte.

Health and Welfare

Givens (Chairman), Theiling (Vice Chairman), Artrip, Ballouz, Bird, Blatnik, Brown (23rd Dist.), Crookshanks, Davis, Flanigan, Goff, Hagedorn, Hartman, Kelly, Knight, Leary, Manchin, McClister, Sergent, Smith, Steptoe, Toney, Conley, Otte and Rogers.

Industry and Labor

Starcher (Chairman), Moore (Vice Chairman), Ashcraft, Bledsoe, Crabtree, Damron (15th Dist.), Davis, Fullen, Gilliam, Hatcher, Holt, Kidd, Lewis, Mullett, Murphy, Riffle, Simpkins, Sluss, Spencer, Stewart, Williams, Yanni, Carmichael, Nicely and Otte.

Interstate Cooperation

Whitlow (Chairman), Damron (12th Dist.), Gilliam, Neal, Otte and Rogers.

Judiciary

Albright (Chairman), Damron (15th Dist.), (Vice Chairman), Bird, Brown (33rd Dist.), Casey, Chambers, Crookshanks, Davis, Feinberg, Fullen, Gilliam, Hatcher, Humphreys, MacCorkle, Martin (27th Dist.), Moore, Schifano, Sluss, Steptoe, Whitlow, Williams, Wooton, Carmichael, Shaffer and Springston.

Political Subdivisions

Martin (27th Dist.) (Chairman), Murenksy (Vice Chairman), Bailey, Brown (33rd Dist.), Casey, Childers, Cipriani, Doyle, Humphreys, Hutchinson, Kelly, Kidd, MacCorkle, Martin (32nd Dist.), McCormick, Miller, Minard, Seacrist, Theiling, Toler, Underwood (23rd Dist.), Wooton, Carmichael, Harman and McKinley.
**House of Delegates Committees**

**Roads and Transportation**

Yanni (Chairman), Simpkins (Vice Chairman), Ashcraft, Bledsoe, Burke, Crabtree, Dalton, Feinberg, Ferrell, Hagedorn, Holt, Johnson, Jordan, Lewis, Meadows, Mullett, Roop, Seacrist, Sergent, Spencer, Underwood (13th Dist.), Underwood (23rd Dist.), Conley, McKinley and Shanholtz.

**Rules**

See (Chairman), Albright, Damron (15th Dist.), Polan, Sattes, Schifano, Shiflet, Wehrle, Wiedebusch, Wooton, Swann and Teets.

**Joint Committees**

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**Enrolled Bills**

Anello (Chairman), Childers (Vice Chairman), Hagedorn, Faircloth and Otte.

**Government and Finance**

See (Cochairman), Albright, Polan, Sattes, Shiflet, Swann and Teets.

**Legislative Rule-Making Review**

Chambers (Chairman), Schifano, Shiflet, Wiedebusch, Teets and Shaffer.

**Rules**

See (Chairman ex officio), Shiflet and Swann.

**Commission on Special Investigations**

See (Chairman), Hatcher, Wooton, Teets and Shaffer.
AN ACT to amend and reenact sections two, four, five, seven, eight, nine, eleven and seventeen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections twelve-a and twenty-three-a, all relating to establishing a fifteen or seven year period as the time necessary for property to be presumed abandoned; providing for fifteen-year period for interest bearing accounts and travelers checks; prohibiting a holder from charging a fee or ceasing payment of interest on abandoned property without a written contract between the holder and the owner allowing such charges; allowing for a presumption of abandonment of tangible personal property; requiring reports of abandoned property; requiring necessary information in such reports; establishing certain time periods for filing such reports; granting the state treasurer the authority to examine records of persons upon reasonable belief such person has failed to report property that should have been reported; granting the treasurer the authority to charge the person examined for the cost of the examination in certain instances; providing that records of abandoned property are confidential, and exceptions; providing for the sale of abandoned property; granting the treasurer the authority to enter into reciprocal agreements with other states.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, seven, eight, nine, eleven and
seventeen, article eight, chapter thirty-six 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 two new sections, designated sections twelve-a and twenty-three-a, all to read as follows:

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-2. Property held by banking or financial organizations.
§36-8-4. Deposits and refunds held by utilities.
§36-8-5. Undistributed dividends and distributions of business associations.
§36-8-7. Property held by fiduciaries.
§36-8-8. Property held by courts and public officers and agencies.
§36-8-9. Miscellaneous personal property held for another person.
§36-8-12a. Records of abandoned property confidential except as to persons with claim.
§36-8-17. Sale of abandoned property.
§36-8-23a. Interstate agreements and cooperation; joint and reciprocal actions with other states.

§36-8-2. Property held by banking or financial organizations.

1 The following property held or owing by a banking or financial organization is presumed abandoned:

3 (a) Any noninterest bearing demand, savings or matured time deposit made in this state with a banking organization, or other financial organization, excluding any charges which may lawfully be withheld, if the owner has not within the immediately preceding seven years increased or decreased the amount of the deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the deposit within the seven-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

13 (1) Corresponded in writing with the organization concerning the deposit; or

15 (2) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization.

17 In any case where the owner has taken any of the actions specified in (1) or (2) of this subdivision (a) there shall
thereafter be no presumption of abandonment unless and
until another seven years have passed without any increase
or decrease in the amount of the deposit and without any of
such actions having been taken in the last year of such
further seven-year period.

(b) Any interest bearing demand, savings or matured time
deposit made in this state with a banking organization or other
financial organization, together with any interest or dividend
thereon, excluding any charges which may lawfully be with-
held, if the owner has not within the immediately preceding
fifteen years increased or decreased the amount of the de-
posit: Provided, That notwithstanding the fact that there
has been no increase or decrease in the amount of the deposit
within the fifteen-year period, there shall be no presump-
tion of abandonment if the owner has within the immediately
preceding year:

(1) Presented the passbook or other similar evidence of
deposit for the crediting of interest; or

(2) Corresponded in writing with the organization con-
cerning the deposit; or

(3) Otherwise indicated an interest in the deposit as
evidenced by a memorandum on file with the organiza-
tion.

In any case where the owner has taken any of the actions
specified in (1), (2) or (3) of this subdivision (b) there
shall thereafter be no presumption of abandonment unless
and until another fifteen years have passed without any
increase or decrease in the amount of the deposit and with-
out any of such actions having been taken in the last year
of such further fifteen-year period.

(c) Any noninterest bearing funds paid in this state to-
ward the purchase of shares or other interest in a financial
organization or any deposit made therewith in this state,
excluding any charges that may lawfully be withheld, if the
owner has not within the immediately preceding seven years
increased or decreased the amount of the funds or deposit:
Provided, That notwithstanding the fact that there has been no
increase or decrease in the amount of the funds or deposit within said seven-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Corresponded in writing with the financial organization concerning the funds or deposit; or

(2) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

In any case where the owner has taken any of the actions specified in (1) or (2) of this subdivision (c), there shall thereafter be no presumption of abandonment unless and until another seven years have passed without any increase or decrease in the amount of the funds or deposit and without any of such actions having been taken in the last year of such further seven-year period.

(d) Any interest bearing funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding fifteen years increased or decreased the amount of the funds or deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the funds or deposit within said fifteen-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

In any case where the owner has taken any of the actions specified in (1), (2) or (3) of this subdivision (d), there shall thereafter be no presumption of abandonment unless and
until another fifteen years have passed without any increase or
decrease in the amount of the funds or deposit and without
any of such actions having been taken in the last year of such
further fifteen-year period.

(e) Any sum payable on any check certified in this state
or on any written instrument issued in this state on which a
banking or financial organization is directly liable, including,
by way of illustration but not of limitation, a certificate of de­
posit and draft, that has been outstanding for more than
seven years from the date it was payable, or from the date of
its issuance if payable on demand, unless the owner has within
the preceding year corresponded in writing with the banking
or financial organization concerning it, or otherwise indicated
an interest as evidenced by a memorandum on file with the
banking or financial organization.

(f) Any funds or other personal property, tangible or in­
tangible, removed from a safe-deposit box or any other safe­
keeping repository in this state on which the lease or rental
period has expired due to nonpayment of rental charges or
other reason, or any surplus amounts arising from the sale
thereof pursuant to law, that have been unclaimed by the
owner for more than seven years from the date on which the
lease or rental period expired.

(g) No holder may impose with respect to property de­
scribed in this section any charges due to dormancy or inac­
tivity or cease payment of interest unless there is an enforce­
able written contract between the holder and the owner of the
property pursuant to which the holder may impose those
charges or cease payment of interest.

(h) Any amount held or owing by any organization for the
payment of a travelers check on which such organization is
directly liable shall be presumed abandoned if such amount is
held or owing for payment of a travelers check which shall
have been outstanding for more than fifteen years from the
date of its sale.

§36-8-4. Deposits and refunds held by utilities.

The following funds held or owing by any utility are pre­
sumed abandoned:
(a) Any deposit made subsequent to one thousand nine
hundred fifty-seven, by a subscriber with a utility to secure pay-
ment for, or any sum paid in advance for, utility services to
be furnished in this state, less any lawful deductions, that has
remained unclaimed by the person appearing on the records
of the utility entitled thereto for more than seven years after
the termination of the services for which the deposit or ad-
vance payment was made.

(b) Any sum which a utility has been ordered to refund and
which was received subsequent to one thousand nine hundred
fifty-seven, for utility services rendered in this state, together
with any interest thereon, less any lawful deductions, that
has remained unclaimed by the person appearing on the rec-
ords of the utility entitled thereto for more than seven years
after the date it became payable in accordance with the final
determination or order providing for the refund.

§36-8-5. Undistributed dividends and distributions of business as-
sociations.

Any stock or other certificate of ownership, or any divi-
dend, profit, distribution, interest, payment on principal, or
other sum held or owing by a business association for or to
a shareholder, certificate holder, member, bondholder, or
other security holder, or a participating patron of a coopera-
tive, who has not claimed it, or corresponded in writing with
the business association concerning it, within seven years after
the date prescribed for payment or delivery, is presumed aban-
donned if:

(a) It is held or owing by a business association organized
under the laws of or created in this state; or

(b) It is held or owing by a business association doing busi-
ness in this state, but not organized under the laws of or
created in this state, and the records of the business associa-
tion indicate that the last-known address of the person en-
titled thereto is in this state.

§36-8-7. Property held by fiduciaries.

All intangible personal property and any income or incre-
ment thereon, held in a fiduciary capacity for the benefit
of another person is presumed abandoned unless the owner
has, within seven years after the final date for distribution
of such property and the cessation of all active fiduciary
duties as required by law or the instrument under which
the fiduciary is acting, increased or decreased the principal,
accepted payment of principal or income, corresponded in
writing with the fiduciary concerning the property, or other-
wise indicated an interest as evidenced by a memorandum on
file with the fiduciary:

(a) If the property is held by a banking organization or
a financial organization, or by a business association or-
ganized under the laws of or created in this state; or

(b) If it is held by a business association, doing busi-
ness in this state, but not organized under the laws of or
created in this state, and the records of the business association
indicate that the last-known address of the person entitled
thereto is in this state; or

(c) If it is held in this state by any other person.

§36-8-8. Property held by courts and public officers and agencies.

(a) All intangible personal property held for the owner
by any state or federal court, public corporation, public
authority, or public officer in this state, or a political sub-
division thereof, that has remained unclaimed by the owner
for more than seven years is presumed abandoned: Pro-
vided, That this provision shall in no way affect such property
in the custody or control of any state or federal court in any
pending action: Provided, however, That if any federal statute
provides for the distribution of any unclaimed property subject
to the jurisdiction of a federal court, this statute shall not apply.

(b) Notwithstanding the provisions of subsection (a) of
this section, all intangible personal property in the custody
or control of a general receiver of a state court of record
appointed pursuant to the provisions of article six, chapter
fifty-one of this code, that has remained unclaimed by the owner
for more than seven years is presumed abandoned: Provided,
That any such property in the custody or control of any such
general receiver in which there is any contingent remainder
interest, or any vested remainder interest which is subject to
open to let in persons not yet in being or to open to let in
members of any class, or any executory interest, or executory
devise interest, or any base, qualified, conditional, or limited
fee estate or interest, or any other qualified, conditional,
limited or determinable estate or interest, shall not be
presumed abandoned until such property has remained un-
claimed for more than seven years after such estate or in-
terest has vested or any such class has closed and the per-
sons entitled to such property have been determined.

§36-8-9. Miscellaneous personal property held for another person.

All personal property not otherwise covered by this article,
including any income or increment thereon and after deduct-
ing any lawful charges, that is held or owing in this state
in the ordinary course of the holder's business and has re-
mained unclaimed by the owner for more than seven years
after it became payable or distributable is presumed aban-
doned: Provided, That this section shall not apply to such
property held or owing by a utility prior to one thousand
nine hundred fifty-seven: Provided, however, That no banking
organization or other financial organization shall levy any
charge or fee against any citizen of this state who owns
any savings account or any interest therein when said account
has been without activity for any period of time.


(a) Every person holding funds or other property, tangible
or intangible, presumed abandoned under this article shall
report to the state treasurer with respect to the property as
hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last-known address, if any,
of each person appearing from the records of the holder to
be the owner of any property of the value of fifty dollars or
more presumed abandoned under this article;

(2) In case of unclaimed funds of life insurance corpora-
tions, the full name of the insured or annuitant and his last-
known address according to the life insurance corporation’s records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this article.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November first of each year as of June thirtieth next preceding, but the report of life insurance corporations shall be filed before May first of each year as of December thirty-first next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this article knows the whereabouts of the owner and if the owner’s claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, attempt to communicate with the owner so that the owner may take necessary steps to prevent abandonment from being presumed. A notice from the holder to the owner sent to the owner’s last-known address by United States mail, postage prepaid, shall satisfy the requirements of this subsection (e).

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this article shall include
all items of property which, under the provisions hereof, would have been presumed abandoned on the effective date of this article had this article been in effect on July one, one thousand nine hundred fifty-two.

(h) The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that the person has failed to report property that should have been reported pursuant to this section.

If an examination of the records of a person results in disclosure of property reportable and deliverable under this section, the treasurer may assess the cost of the examination against the holder at a rate established by administrative regulation promulgated pursuant to chapter twenty-nine-a of this code, but in no case may the charges exceed the value of the property found to be reportable and deliverable.

§36-8-12a. Records of abandoned property confidential except as to persons with claim.

Records of abandoned property kept by the state treasurer are available for inspection and copying only by an owner of such property as to the particular property he owns, or by his personal representative, next of kin, attorney at law, or such persons entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of chapter twenty-nine-b of the code.

§36-8-17. Sale of abandoned property.

(a) All abandoned property other than money delivered to the state treasurer under this article shall as soon as practicable after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a publication of notice thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such publica-
tion shall be the county where the property is to be sold. The 
publication shall be at least three weeks in advance of sale. 

(c) The purchaser at any sale conducted by the state trea-
surer pursuant to this article shall receive title to the property 
purchased, free from all claims of the owner or prior holder 
thereof and of all persons claiming through or under them. 
The state treasurer shall execute all documents necessary to 
complete the transfer of title.

§36-8-23a. Interstate agreements and cooperation; joint and recip-
roc al actions with other states. 

(a) The treasurer may enter into agreements with other 
states to exchange information needed to enable this or another 
state to audit or otherwise determine unclaimed property 
that it or another state may be entitled to subject to a claim 
of custody. The treasurer by rule may require the reporting of 
information needed to enable compliance with agreements 
made pursuant to this section and prescribe the form.

(b) To avoid conflicts between the treasurer’s procedures 
and the procedures of administrators in other jurisdictions the 
treasurer shall, so far as is consistent with the purposes, policies 
and provisions of this article before adopting, amending or 
repealing rules, advise and consult with administrators in 
other jurisdictions and take into consideration the rules of 
those other administrators in other jurisdictions.

(c) The treasurer may join with other states to seek en-
forcement of this article against any person who is or may be 
holding property reportable under this article.

CHAPTER 2

(Com. Sub. for S. B. 149—By Mr. Wright and Mr. Heck)

[Passed March 1, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the limitation of actions and
suits seeking recovery for deficiencies, injuries or wrongful death resulting from any improvements to real property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-6a. Deficiencies, injuries or wrongful death resulting from any improvements to real property; limitation of actions and suits.

1 No action, whether in contract or in tort, for indemnity or otherwise, nor any action for contribution or indemnity to recover damages for any deficiency in the planning, design, surveying, observation or supervision of any construction or the actual construction of any improvement to real property, or, to recover damages for any injury to real or personal property, or, for an injury to a person or for bodily injury or wrongful death arising out of the defective or unsafe condition of any improvement to real property, may be brought more than ten years after the performance or furnishing of such services or construction: Provided, That the above period shall be tolled according to the provisions of section twenty-one of this article. The period of limitation provided in this section shall not commence until the improvement to the real property in question has been occupied or accepted by the owner of real property, whichever occurs first.

CHAPTER 3

(Com. Sub. for H. B. 1209—By Mr. Whitlow)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five 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 three-a, relating to terminating a tenancy for wrongful occupation of residential property; petition for relief; defenses available; and proceedings in court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

§55-3A-2. Defenses available.

§55-3A-3. Proceedings in court; final order.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

(a) A person desiring to remove a tenant from residential rental property may apply for such relief to the magistrate court or the circuit court of the county in which such property is located, by verified petition, setting forth the following:

(1) That he is the owner or agent of the owner and as such has a right to recover possession of the property;

(2) A brief description of the property sufficient to identify it;

(3) That the tenant is wrongfully occupying such property in that the tenant is in arrears in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or negligently damaged the property or knowingly permitted another person to do so, and describing such arrearage, breach, or act or omission; and

(4) A prayer for possession of the property.

(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for such hearing, which time shall not be less than five nor more than ten judicial days following such request.
(c) Immediately upon being apprised of the time and place for hearing the petitioner shall cause a notice of the same to be served upon the tenant in accordance with the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested. Such notice shall inform the tenant that any defense to the petition must be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice, and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his petition and such proof of service.

§55-3A-2. Defenses available.

In a proceeding under the provisions of this article, a tenant against whom a petition has been brought may assert any and all defenses which might be raised in an action for ejectment or an action for unlawful detainer.

§55-3A-3. Proceedings in court; final order.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order granting immediate possession of the property to the petitioner.

(b) In the case of a petition alleging arrearage in rent, if the tenant shall file an answer raising the defense of breach by the landlord of a material covenant upon which the duty to pay rent depends, the court shall proceed to a hearing on such issues.

(c) In the case of a petition alleging a breach by the tenant or damage to the property, if the defendant shall file an answer raising defenses to the claim or claims set forth in the petition the court shall proceed to a hearing on such issues.

(d) Continuances of the hearing provided for in this section shall be for cause only and the judge or magistrate
shall not grant a continuance to either party as a matter of
right. If a continuance is granted upon request by a tenant,
the tenant shall be required to pay into court any periodic
rent becoming due during the period of such continuance.

(e) At the conclusion of a hearing held under the pro-
visions of subsection (b) or (c) of this section if the court
shall find that the tenant is in wrongful occupation of the
rental property the court shall make and enter an order grant-
ing immediate possession of the property to the petitioner.
In the case of a proceeding under subsection (a) of this section
the court may also make a written finding and include in its
order such relief on the issue of arrearage in the payment of
rent as the evidence may require. Any moneys paid into court
by the tenant in accordance with the provisions of this section
may be ordered to be disbursed to the parties as may be
appropriate under the findings of the court.

(f) Taking into consideration such factors as the nature
of the property (i.e., furnished or unfurnished) the possibility
of relative harm to the parties and other material facts deemed
relevant by the court in considering the time in which the
tenant might reasonably be expected to vacate the premises,
the court shall in its order specify the time by which the
tenant must remove himself from the property. The order
shall further provide that if the tenant still wrongfully oc-
cupies the property beyond such time the sheriff shall forth-
with remove him, taking such precautions as are necessary to
guard against damage to the property of the landlord and the
tenant.

(g) Absent an issue of title, retaliation, or breach of warn-
nty, and in the event of an appeal wherein the tenant prevails.
if the term of the lease has expired the relief ordered by the
appellate court shall be for monetary damages only and shall
not restore the tenant to possession. During the pendency of
any such appeal no tenant shall be entitled to remain in pos-
session of the leasehold if the period of the tenancy has other-
wise expired.
AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to limitation on liability of food donor; providing exemption from civil liability for food donors who donate food to nonprofit, religious or charitable organizations in certain cases; providing for exceptions thereto; and providing that authority to inspect is not limited.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§ 55-7-16. Limiting liability of food donors; exemption from civil liability in certain cases; exceptions; authority to inspect not limited.

Any farmer, processor, distributor, wholesaler or retailer of food or other person who donates food in good faith to any nonprofit, religious or charitable organization which is exempt from taxation under 26 U.S.C. § 501(c)(3) or (4), which maintains a food storage warehouse or facility regulated by the state department of agriculture, the state department of health and, where required, by local ordinance, and which receives and utilizes such donated food for free use or free distribution to the ultimate consumer thereof, is exempt from civil liability arising from any injury or death resulting from the nature, age, condition or packaging of the donated food: Provided, That the exemption of this section does not apply in the event that the injury or death is the direct
and proximate result of the gross negligence, or the willful, wanton or reckless misconduct or the intentional act of the donor. Nothing contained herein limits liability on the part of any donee nonprofit or charitable or religious organization which accepts items of donated food under this section nor restricts the authority of the state department of agriculture, the state department of health or any county or municipal health officer to regulate, inspect or ban the use of such donated food for human consumption.

CHAPTER 5
(S. B. 585—By Mrs. Chace, Mr. Kaufman, Mr. White, Mr. Tonkovich, Mr. Boettner and Mr. Tucker)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-eight, chapter sixteen 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 limitation of actions and suits for damages resulting from exposure to chemical defoliants and herbicides.

Be it enacted by the Legislature of West Virginia:

That article twenty-eight, 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 ten, to read as follows:

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

§16-28-10. Limitation of actions and suits.

1 An action to recover damages under the provisions of this article for personal injury caused by contact with or exposure to chemical defoliants or herbicides, including
alcoholic liquors

agent orange, during either the Korean or Vietnam conflict, may be commenced within two years from the date of discovery of such injury, or within two years from the date when through the exercise of reasonable diligence the cause of such injury should have been discovered, whichever is later.

Every cause of action for an injury or death caused by contact with or exposure to chemical defoliants or herbicides, including agent orange, during either the Korean or Vietnam conflict, which is barred as of the effective date of this section because the applicable period of limitation has expired is hereby revived and an action thereon may be commenced and prosecuted provided such action is commenced within two years of the effective date of this section.

CHAPTER 6

(S. B. 542—By Mr. Tucker)

[Passed March 12, 1983; in effect ninety days from passage. 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; to amend and reenact section thirteen, article sixteen, chapter eleven of said code; to amend and reenact sections eight and twelve, article two, chapter seventeen-b of said code; to amend and reenact section one, article four of said chapter seventeen-b; to amend and reenact sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code; to amend and reenact section three, article four of said chapter sixty; to amend and reenact sections six and nine, article six of said chapter sixty; to amend and reenact section twelve, article seven of said chapter sixty; and to amend and reenact sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty, all relating to the sale of nonintoxicating beer, wine and intoxicating liquors; authorizing municipalities to collect the tax on
intoxicating liquors and imposing such tax on distributors licensed to sell or distribute wine; describing unlawful acts by licensees of nonintoxicating beer and prohibiting the sale of nonintoxicating beer to persons under the age of nineteen with certain exceptions and establishing a penalty therefor; requiring the use of specific identification of persons under the age of twenty-one years when purchasing nonintoxicating beer; permitting brewers to sponsor amateur athletic events and provide prizes therefor; providing for the issuance and contents of licenses and nonoperator's identification by the department of motor vehicles, and describing how such licenses and identifications may be renewed; defining unlawful uses of licenses and nonoperator's identifications and making such uses misdemeanors punishable by penalty of law; authorizing a tax on intoxicating liquors and wine sold outside the corporate limits of municipalities for the use and benefit of counties and municipalities; providing for restrictions on the display or distribution of advertising matter in stores or agencies of the alcohol beverage control commissioner and removing the restriction on the display of alcoholic liquor; providing for sales of alcoholic liquors to be by cash and other modes of payment; increasing the limitation on the amount of alcoholic liquor which can be sold to a person at one time; prohibiting the sales of alcoholic liquors to certain persons and specifically prohibiting the sale of alcoholic liquors to persons less than nineteen years of age with certain exceptions; requiring the use of specific identification for persons under the age of twenty-one years who purchase alcoholic liquors; describing those persons to whom manufacturers of alcoholic liquors may sell such liquors to and providing an exception for farm wineries; restricting the alcohol beverage control commissioner from prohibiting a farm winery licensee from advertising a particular brand of wine and the price thereof; increasing the quantity of alcoholic liquor which may be brought into or transported in this state; describing offenses relating to intoxication, drinking in public places and illegally possessing alcoholic liquor and specifically defining an offense for a person under the age of nineteen to purchase or attempt to purchase alcoholic liquor, wine or nonintoxicating beer and prescribing penalties for such offenses; establishing that for the crime of public
intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding intoxication or drinking in public places; providing for the crime of public intoxication, various actions by a law-enforcement officer after an arrest without a warrant, presentment before a judicial officer, options available to such officer concerning detention of incapacitated persons; providing for minimum fines, imprisonment or counseling for various offenses; providing for the licensing of private clubs, and defining unlawful acts for such licensees and establishing penalties therefor; specifically prohibiting the sale, giving away or procurement of alcoholic liquors by a person under the age of nineteen years, with certain exceptions; establishing a penalty therefor; specifically prohibiting a licensee from permitting consumption by or serving of alcoholic liquors to a person under the age of nineteen years with certain exceptions; prescribing a penalty therefor; providing for the sale of wines and the license fees and general restrictions applicable to distributors and retailers of wine; providing for the issuance of a wine tasting license by the commissioner; authorizing certain Class A retailer dealers in nonintoxicating beer to also be licensed as a wine retailer under certain limited circumstances; authorizing wine retailers to hold a wine tasting license and to serve complimentary samples of wine in moderate quantities at times and places where the general public is excluded; defining unlawful acts for distributors and retailers of wine and prescribing penalties therefor; specifically defining the offense of selling, furnishing or giving wine to a person less than nineteen years of age with certain exceptions; prescribing a penalty therefor; requiring the display of specific identification by persons under the age of twenty-one when purchasing wine; describing the duties and powers of the commissioner with respect to the sale of wine; specifically authorizing the commissioner to restrict the content of wine advertising; providing that the commissioner shall not prohibit the advertising of a particular brand or brands of wine and the price thereof; describing the conditions under which retail sales of wine
are prohibited; defining the unlawful offenses of selling or delivering wine on certain election days or between certain hours, which such unlawful acts are subject to penalties.

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 thirteen, article sixteen, chapter eleven of said code be amended and reenacted; that sections eight and twelve, article two, chapter seventeen-b of said code be amended and reenacted; that section one, article four of said chapter seventeen-b be amended and reenacted; that sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code be amended and reenacted; that section three, article four of said chapter sixty be amended and reenacted; that sections six and nine, article six of said chapter sixty be amended and reenacted; that section twelve, article seven of said chapter sixty be amended and reenacted; and that sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty be amended and reenacted, all to read as follows:

Chapter


11. Taxation.

17B. Motor Vehicle Operators’ and Chauffeurs’ Licenses.

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, from any person licensed to sell wine at retail to the public under the provisions of article eight, chapter sixty of this code, or from distributors licensed to sell or distribute wine pursuant to said article eight: 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.

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 shall provide for the
collection of such tax upon all purchases within such
municipality of intoxicating liquors from the alcohol
beverage control commissioner, from any person licensed to
sell wine at retail pursuant to the provisions of article eight,
chapter sixty of this code, or from distributors licensed to
sell or distribute wine pursuant to said article eight, 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 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Unlawful acts of licensees; penalties.

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents or
employees to sell, give or dispense, or any individual to
drink or consume, in or on any licensed premises or in any
rooms directly connected therewith, nonintoxicating beer
on weekdays between the hours of two o'clock a.m., and
seven o'clock a.m., or between the hours of two o'clock a.m.,
and one o'clock p.m., on any Sunday, except in private clubs
licensed under the provisions of article seven, chapter sixty
of this code, where the hours shall conform with the hours of
sale of alcoholic liquors;
(b) For any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person under the age of nineteen unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three, or to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard;

c) On and after the first day of October, one thousand nine hundred eighty-three, for any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first displays a valid operator's license, chauffeur's license or nonoperator's identification, issued to such person under the provisions of section eight, article two, chapter seventeen-b of this code;

d) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

e) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday;

(f) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any amateur athletic event or from providing prizes or awards for participants and winners in any such events: Provided, however, That no such event shall be
sponsored which permits actual participation by athletes or 
other persons who are minors;

(g) For any licensee to transport, sell, deliver or 
purchase any nonintoxicating beer or product of the 
brewing industry upon which there shall appear a label or 
other informative data which in any manner refers to the 
alcoholic content of such beer or product of the brewing 
industry, or upon the label of which there appears the word 
or words "strong," "full strength," "extra strength," 
"prewar strength," "high test" or other similar expressions 
bearing upon the alcoholic content of such product of the 
brewing industry, or which refers in any manner to the 
original alcoholic strength, extract or balling proof from 
which such beverage was produced, except that such label 
shall state the alcoholic content thereof;

(h) For any licensee to permit in his premises any lewd, 
immoral or improper entertainment, conduct or practice;

(i) For any licensee except the holder of a license to 
operate a private club issued under the provisions of article 
seven, chapter sixty of this code, to possess a federal license, 
tax receipt or other permit entitling, authorizing or 
allowing such licensee to sell liquor or alcoholic drinks;

(j) For any licensee to obstruct the view of the interior of 
his premises by enclosure, lattice, drapes or any means 
which would prevent plain view of the patrons occupying 
such premises. The interior of all licensed premises shall be 
adequately lighted at all times: Provided, That provisions 
of this subdivision shall not apply to the premises of a Class 
B retailer or to the premises of a private club licensed under 
the provisions of article seven, chapter sixty of this code;

(k) For any licensee to manufacture, import, sell, trade, 
barter, possess or acquiesce in the sale, possession or 
consumption of any alcoholic liquors on the premises 
covered by such license or on premises directly or indirectly 
used in connection therewith: Provided, That the 
prohibitions contained in this subdivision with respect to 
the selling or possessing or to the acquiescence in the sale, 
possession or consumption of alcoholic liquors shall not be 
applicable with respect to the holder of a license to operate 
a private club issued under the provisions of article seven, 
chapter sixty of this code;
94  (l) For any licensee to print, paint or place upon the
door, window, or in any other public place in or about the
premises, the word "saloon" or word of similar character or
nature, or for the word "saloon" or similar words to be used
in any advertisement by the licensee;

99  (m) For any retail licensee to sell or dispense
nonintoxicating beer purchased or acquired from any
source other than a licensed distributor or brewer under the
laws of this state;

103  (n) For any licensee to permit loud, boisterous or
disorderly conduct of any kind upon his premises or to
permit the use of loud musical instruments if either or any
of the same may disturb the peace and quietude of the
community wherein such business is located: Provided,
108  That no licensee shall have in connection with his place of
business any loudspeaker located on the outside of the
licensed premises that broadcasts or carries music of any
111  kind;

112  (o) For any person whose license has been revoked, as in
this article provided, to obtain employment with any
retailer within the period of one year from the date of such
revocation, or for any retailer to employ knowingly any
such person within such time;

117  (p) For any distributor to sell, possess for sale, transport
or distribute nonintoxicating beer except in the original
119  container;

120  (q) For any licensee to permit any act to be done upon
the licensed premises, the commission of which constitutes
a crime under the laws of this state;

123  (r) For any Class B retailer to permit the consumption of
nonintoxicating beer upon his licensed premises;

125  (s) For any licensee, his, its or their servants, agents or
employees, or for any licensee by or through such servants,
agents or employees, to allow, suffer or permit any person
under the age of eighteen years to loiter in or upon any
licensed premises; except, however, that the provisions of
this subdivision shall not apply where such person under
the age of eighteen years, is in, or upon such premises in the
immediate company of his or her parent or parents, or
where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

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 revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Magistrates shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article
2. Issuance of License, Expiration and Renewal.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses and nonoperator's identification; fees.
§17B-2-12. Expiration of licenses and nonoperator's identification; renewal; renewal fees.

§17B-2-8. Issuance and contents of licenses and nonoperator's identification; fees.

1 (a) (1) 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.

(2) 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.

(3) 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 issued.

(b) (1) For the purposes of this subsection, a “qualified nonoperator” shall mean any citizen of this state who has not had issued to him a current operator's or chauffeur's license, or any person enrolled as a full-time student at an institution of higher education or an accredited vocational or trade school in this state who (A) is under the age of twenty-one years, (B) is residing in this state but is domiciled in another state, and (C) who may or may not hold a valid operator's or chauffeur's license from such other state.

(2) On and after the first day of August, one thousand nine hundred eighty-three, the department shall, upon payment of the same fee required for the issuance of an operator's license, issue to any qualified nonoperator applying therefor a nonoperator's identification which shall be in a similar form to, and shall contain the same
information as contained in, a license issued under subsection (a) of this section: Provided, That in addition to having printed thereon the words "West Virginia Non-operator's Identification," the identification shall be coded by color or otherwise to make it clearly distinguishable from an operator's or chauffeur's license. The department shall use such process or processes in the issuance of identifications that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, such identifications.

§17B-2-12. Expiration of licenses and nonoperator's identification; renewal; renewal fees.

(a) (1) 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.

(2) 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.

(3) 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.

(b) Every nonoperator's identification shall expire four years from the date of its issuance, except that an identification issued to a person not domiciled in this state
who is a full-time student shall expire four years from the
date of its issuance or upon such person's attaining the age
of twenty-one years, whichever is sooner. A nonoperator's
identification may be renewed in the same manner and for
the same fees as an operator's license.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-1. Unlawful use of license or nonoperator's identifica-
tion; license and nonoperator's identification violations generally.

It is a misdemeanor for any person to commit any one of
the following acts:

1. (1) To display or cause or permit to be displayed or have
in his possession any canceled, revoked, suspended,
fictitious, or fraudulently altered operator's or chauffeur's
license or nonoperator's identification;

2. (2) To lend his operator's or chauffeur's license or non-
operator's identification to any other person or knowingly
permit the use thereof by another;

3. (3) To display or represent as one's own any operator's
or chauffeur's license or nonoperator's identification not
issued to him;

4. (4) To fail or refuse to surrender to the department upon
its lawful demand any operator's or chauffeur's license or
nonoperator's identification which has been suspended,
revoked or canceled;

5. (5) To use a false or fictitious name in any application
for an operator's or chauffeur's license or nonoperator's
identification or to knowingly make a false statement or to
knowingly conceal a material fact or otherwise commit a
fraud in any such application;

6. (6) To permit any unlawful use of an operator's or
chauffeur's license or nonoperator's identification issued
to him; or

7. (7) To do any act forbidden or fail to perform any act
required by this chapter.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3. Sales by Commissioner.
4. Licenses.
7. Licenses to Private Clubs.
8. Sale of Wines.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.
§60-3-13. Advertising or recommendation of brands prohibited.
§60-3-20. Sales; mode of payment.
§60-3-21. Limitation of amount to be sold.
§60-3-22. Sales to certain persons prohibited.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

1 For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities 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 beverage control commissioner, of wine from any person licensed to sell wine at retail under the provisions of article eight, chapter sixty of this code, and of wine from distributors licensed to sell or distribute wine under the provisions of said article eight.

The tax shall be five percent of the purchase price and shall be added to and collected with the purchase price by the commissioner, by the person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the case may be: 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
suggested 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, or from distributors licensed to sell or distribute wine under the provisions of said article eight, and shall also provide for 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.

§60-3-13. Advertising or recommendation of brands prohibited.

A store or agency shall not display or distribute any advertising matter, nor shall a person employed in a store or agency advertise or recommend any type, class or brand of alcoholic liquors.

§60-3-20. Sales; mode of payment.

The sale of alcoholic liquors in state stores and in state agencies shall be for cash, money order, certified check, cashier’s check or traveler’s check only. In the case of private clubs as defined in article seven of this chapter, letters of credit from banks guaranteeing payment of checks may be filed with the commissioner. Filing of such
§60-3-21. Limitation on amount to be sold.

Not more than ten gallons of alcoholic liquor shall be sold to a person at one time without the approval of the commissioner or his representative; but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes, and sales in case lots may be made in the discretion of the commissioner: Provided, That this section shall not apply to private clubs as defined in article seven of this chapter.

§60-3-22. Sales to certain persons prohibited.

(a) Alcoholic liquors shall not be sold to a person who is:

(1) Less than nineteen years of age, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three;
(2) An habitual drunkard;
(3) Intoxicated;
(4) Addicted to the use of narcotic drugs;
(5) Mentally incompetent.

(b) On and after the first day of October, one thousand nine hundred eighty-three, alcoholic liquors shall not be sold to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first displays a valid operator's license, chauffeur's license or nonoperator's identification, issued to such person under the provisions of section eight, article two, chapter seventeen-b of this code.

ARTICLE 4. LICENSES.

§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. The commissioner shall not promulgate any rule or regulation which prohibits the holder of a farm winery license from the advertising of a particular brand or brands of wine produced by it, and the price thereof: Provided, however, That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the federal communications commission. A manufacturer may sell alcoholic liquors outside of the state.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

The provisions of this chapter shall not prevent a person from bringing into or transporting in this state, in his possession or in his baggage, and not for resale, alcoholic liquor in a quantity not to exceed ten gallons: Provided, That upon written permission of the commissioner, quantities of alcoholic liquor in excess of ten gallons may be transported within this state.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

(a) A person shall not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;

(4) Tender a drink of alcoholic liquor to another person in a public place;

(5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the

*Clerk's Note: This section was also amended by H. B. 1540 which passed subsequent to S. B. 542.
commissioner, without having first obtained written
authority from the said commissioner therefor;
(6) Possess any alcoholic liquor which was
manufactured or acquired in violation of the provisions of
this chapter;
(7) Purchase or attempt to purchase alcoholic liquor,
wine or nonintoxicating beer if such person at the time of
the purchase or attempted purchase is under the age of
nineteen unless the person is at least eighteen years of age as
of the first day of July, one thousand nine hundred eighty-
three.
(b) Any law-enforcement officer may arrest without a
warrant and take the following actions against a person
who, in his presence, violates subdivision (1), subsection
(a) of this section: (1) If there is some nonintoxicated
person who will accept responsibility for the intoxicated
person, the officer may issue the intoxicated person a
citation specifying a date for appearance before a judicial
officer and release him to the custody of the individual
accepting responsibility: Provided, That the issuance of a
citation shall be used whenever feasible; (2) if it does not
impose an undue burden on the officer he may, after
issuance of such a citation transport the individual to the
individual's present residence or arrange for such
transportation; (3) if the individual is incapacitated or the
alternatives provided in subdivisions (1) and (2) of this
subsection are not possible, the officer shall transport or
arrange for transportation to the appropriate judicial
officer as defined by section seventeen, article eleven,
chapter twenty-seven of the code; or (4) if the individual is
incapacitated and, in the law-enforcement officer's
judgment, is in need of acute medical attention, that officer
shall arrange for transportation by ambulance or otherwise
to a hospital emergency room. The officer shall accompany
the individual until he is discharged from the emergency
room or admitted to the hospital. If the individual is
released from the emergency room, the officer may proceed
as described in subdivisions (1), (2) and (3) of this
subsection. If the individual is admitted to the hospital, the
officer shall issue a citation to the individual specifying a
date for appearance before a judicial officer.
(c) Upon presentment before the proper judicial officer the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him, he may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of an alcohol education program of not more than six hours' duration at the nearest community mental health—mental retardation center. If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more
than one hundred dollars and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health—mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health—mental retardation center:

Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health—mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), (3) or (4), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in jail not more than sixty days, or both such fine and imprisonment. Any person who violates subdivision (5) or (6), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not less than sixty days nor more than twelve months, or both such fine and imprisonment, and, upon conviction of a second or subsequent offense, he shall be guilty of a felony and shall be confined in the penitentiary of this state for a period of not less than one year nor more than three years.

(h) Any person who violates subdivision seven of this section is guilty of a misdemeanor, and, upon conviction
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thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and persons under the age of eighteen years shall be liable for punishment for violation of the offense described in subdivision (7), subsection (a) of this section in the same manner as adults inasmuch as said section does not authorize the imposition of a sentence of confinement, the provisions of section one, article five, chapter forty-nine of this code notwithstanding.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; penalties.

(a) It shall be unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for any person under the age of nineteen years, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three; for any mental incompetent, or for a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;

(4) Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(5) Permit the consumption by, or serve to, on the licensed premises any alcoholic liquors, covered by this article, to any person under the age of nineteen years, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three;

(6) On and after the first day of October, one thousand nine hundred eighty-three, permit the consumption by, or serve to, on the licensed premises any alcoholic liquors,
covered by this article, to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first displays a valid operator's license, chauffeur's license or non-operator's identification, issued to such person under the provisions of section eight, article two, chapter seventeen-b of this code;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Permit any minor to sell, furnish or give alcoholic liquors to any person; or

(10) Violate any reasonable rule or regulation of the commissioner.

(b) It shall further be unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both fine and imprisonment.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.
§60-8-20. Unlawful acts generally.
§60-8-23. Duties and powers of commissioner; rules and regulations.
§60-8-34. When retail sales prohibited.

§60-8-3. Licenses; fees, general restrictions.

(a) 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 continue to engage in any such activity after his license has expired, been suspended or revoked. No person
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7 may be licensed simultaneously as a distributor and a retailer.

9 (b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

11 (1) Twenty-five hundred dollars per year for a distributor's license.

13 (2) One hundred fifty dollars per year for a retailer's license.

15 (3) Fifty dollars per year for a wine tasting license.

16 (c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application is made.

22 (d) No retailer may be licensed as a private club as provided by article seven of this chapter.

24 (e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer, may be a retailer under this article: Provided, however, That any delicatessen licensed in both such capacities must maintain average monthly sales, exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

34 (f) A retailer under this article may also hold a wine tasting license authorizing such retailer to serve complimentary samples of wine in moderate quantities for tasting. Such retailer shall organize a winetaster's club, which has at least fifty duly elected or approved dues paying members in good standing. Such club shall meet on the retailer's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues paying members and their guests.
(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

2 (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;

9 (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 person less than nineteen years of age, unless the person is at least eighteen years of age as of the first day of July, one thousand nine hundred eighty-three, or to a mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;

(d) On and after the first day of October, one thousand nine hundred eighty-three, wine shall not be sold to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first displays a valid operator's license, chauffeur's license or non-operator's identification, issued to such person under the provisions of section eight, article two, chapter seventeen-b of this code;

(e) For a licensee to permit a minor to sell, furnish or give wine to any person;

(f) For a person to violate any reasonable rule or regulation promulgated by the commissioner under this article.
§60-8-23. Duties and powers of commissioner; rules and regulations.

1 The commissioner is hereby authorized:

2 (a) To enforce the provisions of this article.

3 (b) To enter the premises of any licensee at reasonable 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.

4 (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:

5 (1) The transport, use, handling, service and sale of wine;

6 (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;

7 (3) Restricting the content of wine advertising so as to prohibit false or misleading claims, or depictions or descriptions of wine being consumed irresponsibly or immoderately, or advertising presentations designed to appeal to persons below the legal drinking age: Provided, That the commissioner shall not promulgate any rule or regulation which prohibits the advertising of a particular brand or brands of wine and the price thereof: Provided, however, That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the federal communications commission.

8 (d) To issue subpoenas and subpoenas duces tecum for the purpose 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 provisions of chapter twenty-nine-a of this code. The rules and regulations promulgated pursuant to the prior enactment of this article during the regular session of the Legislature for the year one thousand nine hundred eighty-one, and not disapproved by the Legislature shall remain in full force and effect to the extent that such rules and regulations are not abrogated and made null and void by the enactment of this section.

§60-8-34. When retail sales prohibited.

It shall be unlawful for a retailer, his servants, agents or employees to sell or deliver wine on any general or primary election day, or on any special election day in the locality where such special election is held, or prior to one o’clock p.m., or after midnight on Sundays, or between the hours of midnight and nine o’clock a.m. on weekdays and Saturdays.

CHAPTER 7

(Com. Sub. for H. B. 1540—By Mr. Williams and Mr. Springston)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one as amended; to amend and reenact sections eleven and twelve, article one, chapter twenty-seven of said code; to further amend said article one by adding thereto two new sections, designated sections sixteen and seventeen; to amend and reenact section eleven, article one-a, section two, article five and section one, article six-a, all of said chapter twenty-seven; and to amend and reenact section five, article one
and section nine, article six of said chapter sixty, all relating to alternatives to incarceration or criminal penalties for persons charged with the crime of public intoxication; providing for the establishment of a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers by the director of the department of health and educating the public in regard thereto; definitions provided; providing for acceptance by the director of persons voluntarily seeking hospitalization, treatment or rehabilitation and for persons committed by mental hygiene commissioners or judicial officers for such purposes to the director; authorizing the director to contract with public or private entities or persons to implement or administer this comprehensive program; providing for the involuntary hospitalization of individuals believed to be or determined to be addicted without allegations or findings of the likelihood to cause harm; to provide for all examinations relative to involuntary custody for examination to be provided or arranged by a community mental health center designated by the director of health to serve the area in which the application is filed; exception; testimony by community mental health center representative in probable cause hearing; providing for a determination of competency of a person charged with the crime of public intoxication and the detention of such person in the appropriate facility for such purposes; authorizing the transportation of such person by a sheriff to another facility in the event that such person is in need of acute medical care or additional security which cannot be provided by the facility in which he was originally detained; providing immunity from criminal liability or civil liability in damages to any incapacitated person for a person who is carrying out certain responsibilities or procedures related to the commitment of persons charged with the crime of public intoxication and providing exceptions to that immunity in the event of gross negligence or willful or wanton injury; providing for liability in implied contract for costs incurred by such incapacitated persons and prohibitions concerning methods of collection; establishing that for the crime of public intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding in-
toxication or drinking in public places and illegal possession of alcoholic liquors; providing for the crime of public intoxication; various actions by a law-enforcement officer after an arrest without a warrant; presentment before a judicial officer; options available to such officer concerning detention of incapacitated persons; and providing for minimum fines, imprisonment or counseling for various offenses.

Be it enacted by the Legislature of West Virginia:

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

27. Mentally Ill Persons.
60. State Control of Alcoholic Liquors.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-10. Powers and duties of the director of health.

1. The director shall be the chief executive, administrative, and fiscal officer of the department of health and shall have the following powers and duties:

4. (1) To supervise and control the business, fiscal, administrative and health affairs of the department of health, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the laws of this state relating to health and mental health, and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in
the director by law; to that end the director may promulgate
such written rules as are necessary and proper to delegate
functions, establish divisions, specify duties and responsibilities,
prescribe qualifications of division directors and otherwise ad-
minister or supervise the department, subject to the safe-
guards of the state civil service system as it now exists;

(2) To enforce all laws of this state concerning public
health, health and mental health; to that end, the director
shall make, or cause to be made, sanitary investigations and
inquiries respecting the cause of disease, especially of epi-
demics and endemic conditions, and the means of prevention.
suppression or control of such conditions; the source of sick-
ness and mortality, and the effects of environment, employ-
ment, habits and circumstances of life on the public health.
The director shall further make, or cause to be made, inspec-
tions and examinations of food, drink and drugs offered for
sale or public consumption; in such manner as he shall deem
necessary to protect the public health and shall report all
violations of laws and regulations relating thereto to the prose-
cuting attorney of the county in which such violations occur;

(3) To make complaint or cause proceedings to be institut-
ed against any person, corporation or other entity for the
violation of any health law before any court or agency, with-
out being required to give security for costs; such action may
be taken without the sanction of the prosecuting attorney of
the county in which the proceedings are instituted or to which
the proceedings relate;

(4) To supervise and coordinate the administration and
operation of the state hospitals named in article two, chapter
twenty-seven of this code, and any other state facility here-
after created for the mentally ill, mentally retarded or addicted;

(5) To supervise and coordinate the administration and
operation of the health and other facilities named in chapter
twenty-six of this code, except as otherwise therein provided,
and any other state facility hereafter created relating to health,
not otherwise provided for;

(6) To supervise and coordinate the administration and
operation of the county and municipal boards of health and
health officers;

(7) To develop and maintain a state plan of operation
which sets forth the needs of the state in the areas of health
and mental health; goals and objectives for meeting those
needs; methods for achieving the stated goals and objectives;
and needed personnel, funds and authority for achieving the
goals and objectives;

(8) To collect data as may be required to foster knowledge
on the citizenry's health status, the health system and costs of
health care;

(9) To delegate to any appointee, assistant or employee any
and all powers and duties vested in the director, including, but
not limited to, the power to execute contracts and agreements
in the name of the department: Provided, That the director
shall be responsible for the acts of such appointees, assistants
and employees;

(10) To transfer any patient or resident between hospitals
and facilities under the control of the director and, by agree-
ment with the state commissioner of public institutions or his
successor and otherwise in accord with law, accept a transfer
of a resident of a facility under the jurisdiction of the state
commissioner of public institutions or his successor;

(11) To make periodic reports to the governor and to the
Legislature relative to specific subject areas of public health
or mental health, the state facilities under the supervision of
the director, or other matters affecting the health or mental
health of the people of the state;

(12) To accept and use for the benefit of the state, for the
benefit of the health of the people of this state, any gift or
devise of any property or thing which is lawfully given:
Provided, That if any gift is for a specific purpose or for a
particular state hospital or facility, it shall be used as specified.
Any profit which may arise from any such gift or devise of
any property or thing shall be deposited in a special revenue
fund with the state treasurer and shall be used only as speci-
fied by the donor or donors;
(13) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title thereto, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of the governor, to sell, exchange, or otherwise convey any interest, right, privilege, land or improvement acquired or held by the state, state hospital or state facility; which condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

(14) To inspect and enforce rules and regulations to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(15) To make inspections, conduct hearings, and to enforce the rules and regulations of the board concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities and plumbing systems, and the qualifications of personnel connected with such supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the rules and regulations of the board concerning the design of chlorination and filtration facilities and swimming pools;

(16) To reorganize the functions and divisions of the department of health, structuring all functions previously assigned to the board of health, department of health, department of mental health, and otherwise assigned to the department of health by this chapter, to the end of establishing the most efficient and economic delivery of health services in accord with the purposes of this chapter; to achieve such goal the director shall establish such divisions and delegate and assign such responsibilities and functions as he deems necessary to accomplish such reorganization. On or before the first day of February, one thousand nine hundred seventy-eight, the direc-
tor shall submit to the Legislature a report on the reorganization of such department and the effect thereof, including, but not limited to, the cost, the administrative results and the effect on the delivery of health services;

(17) To direct and supervise the provision of dental services in all state institutions;

(18) To provide for, except as otherwise specified herein, a comprehensive system of community mental health and mental retardation supportive services to the end of preventing the unnecessary institutionalization of persons and promoting the community placement of persons presently residing in mental health and mental retardation facilities and other institutions and for the planning of the provisions of comprehensive mental health and mental retardation services throughout the state;

(19) To provide in accordance with this subdivision and the definitions and other provisions of article one-a, chapter twenty-seven of the code, for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse; and

(20) To exercise all other powers delegated to the department by this chapter or otherwise in this code, to enforce all health laws and the rules and regulations promulgated by the board, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the department or director.

CHAPTER 27. MENTALLY ILL PERSONS.

Article
1. Words and Phrases Defined.
1A. Department of Mental Health.
5. Involuntary Hospitalization.
6A. Commitment of Persons Charged or Convicted of a Crime.
ARTICLE 1. WORDS AND PHRASES DEFINED.


"Addiction" means the periodic, frequent or constant use of alcohol, narcotic or other intoxicating or stupefying substance to the point of being incapacitated.

§27-1-12. Likely to cause serious harm.

"Likely to cause serious harm" refers to a person who has:

1. A substantial tendency to physically harm himself which is manifested by threats of or attempts at suicide or serious bodily harm or other conduct, either active or passive, which demonstrates that he is dangerous to himself; or

2. A substantial tendency to physically harm other persons which is manifested by homicidal or other violent behavior which places others in reasonable fear of serious physical harm; or

3. A complete inability to care for himself by reason of mental retardation; or

4. Become incapacitated as defined in section sixteen of this article.

§27-1-16. Incapacitated.

"Incapacitated" means a level of intoxication at which an individual is incapable of physical or mental control of himself, thus rendering him dangerous to himself or others or unable to protect himself from hazard.

§27-1-17. Judicial officer.

"Judicial officer" in the context of the provisions of this and other chapters of this code dealing with disposition of a charge of public intoxication, means a municipal judge, a magistrate or any judge of a court of record in this state.
ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

(a) The division on alcoholism, heretofore established in the department of mental health, shall continue and be known as the division on alcoholism and drug abuse.

(1) The supervisor and personnel of this division shall assist the director of the department of health in the establishment of a program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the causes, prevention, and treatment of alcoholism and drug abuse; for the training of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse.

(2) The department's program for the care, treatment and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of one or more of the state hospitals under the control of the department of mental health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals or other facilities; and the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions in the development, promotion and conduct of the department's program.

(3) Neither the department of mental health nor the division on alcoholism and drug abuse shall be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment or rehabilitation; but the department may accept, pursuant to its adopted and promulgated rules and regulations, responsibility for clinical or hospital care, treatment or rehabilitation of any alcoholic or drug abuser through arrangements made voluntarily with the department by him or some person acting in his behalf: Provided, That any such person accepted by the department on a voluntary basis shall be charged a minimum fee unless
he shows, to the satisfaction of the department, that he is unable to pay the fee: Provided, however, That the department shall accept all alcoholics and drug abusers committed by a mental hygiene commissioner or judicial officer in accordance with the procedures established by article six-a of this chapter: Provided further, That notwithstanding any provision in article five of this chapter which may be to the contrary, the supervisor of the division on alcoholism and drug abuse may specify the clinic or hospital to which the alcoholic or drug abuser shall be committed after a final commitment hearing provided in section four, article five of this chapter.

(4) The department's program of research into the causes, prevention and treatment of alcoholism and drug abuse may include the utilization, through contracts or otherwise, of the available services and assistance of any private and public professional or nonprofessional persons, groups, organizations or institutions, as well as cooperation with private and public agencies engaged in research in alcoholism or drug abuse or rehabilitation of alcoholics or drug abusers.

(5) The department's programs shall also provide for the training of personnel to work with alcoholics and drug abusers and the informing of the public as well as interested groups and persons concerning alcoholism and drug abuse and the prevention and treatment thereof.

(6) The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

(b) As used in this chapter or in section ten, article one, chapter sixteen of the code:

(1) “Alcoholic” means a person who suffers from alcoholism as defined in subdivision (2) of this subsection.

(2) “Alcoholism” means a disease or illness characterized by psychological or physiological addiction to alcoholic beverages as manifested by: (A) The inability to control one's consumption of alcoholic beverages except through total
abstinence, or (B) the inability to control one's behavior when consuming alcoholic beverages, or (C) both.

(3) "Alcoholic abuser" means a person whose use of alcohol has produced any of the effects described in subdivision (4) of this subsection.

(4) "Alcohol abuse" means the periodic, frequent or constant consumption of alcoholic beverages to the extent that one's health is substantially impaired or endangered or one's social or economic functioning is substantially disrupted.

(5) "Drug abuser" means a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(6) "Drug abuse" means the use of any controlled substance as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) When application for involuntary custody for examination may be made.

Any adult person may make application for involuntary hospitalization for examination of an individual when said person has reason to believe that:

(1) The individual is addicted as defined by section eleven, article one of this chapter: Provided, That for purposes of this subdivision and the involuntary commitment procedures specified in this article, the sole issue to be determined is whether the individual is addicted, which by definition includes the notion of being incapacitated, causing harm to others or being unable to prevent harm to himself: Provided, however, That whenever a provision of this article refers to or requires a finding of likelihood to cause serious harm, a find-
ing that an individual is addicted shall be deemed to satisfy such reference or requirement; or

(2) The individual is mentally ill or mentally retarded and, because of his mental illness or mental retardation, the individual is likely to cause serious harm to himself or others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.

(b) Oath; to whom application for involuntary custody for examination is made; contents of application; custody; probable cause hearing; examination.

(1) The person making such application shall do so under oath.

(2) Application for involuntary custody for examination may be made to the circuit court or mental hygiene commissioner of the county in which the individual resides, or of the county in which he may be found.

(3) The person making such application shall give such information and state such facts therein as may be required, upon the form provided for this purpose by the department of health.

(4) The circuit court or mental hygiene commissioner may thereupon enter an order for the individual named in such action to be detained and taken into custody, for the purpose of holding a probable cause hearing described in subdivision (5) of this subsection and for the purpose of an examination of the individual by a physician or a psychologist. Such examination shall be provided or arranged by a community mental health center designated by the director of health to serve the county in which the action takes place. The said order shall specify that such hearing be held forthwith and shall appoint counsel for the individual: Provided, That where a physician or psychologist has performed such examination, the community mental health center may waive this requirement upon approving such examination. Notwithstanding the provisions of this subsection, subsection (r), section four of this article shall apply regarding payment by the county commission for examinations at hearings.
In the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, a magistrate may accept the application and, upon a finding that such immediate detention is necessary pending presentation of the application to the circuit court or mental hygiene commissioner, may order the individual to be temporarily detained in custody until the earliest reasonable time that the application can be presented to the circuit court or mental hygiene commissioner, which temporary period of detention shall not exceed twenty-four hours.

(5) A probable cause hearing shall be held before a magistrate, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he was found. If requested by the individual or his counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and shall have the right to present evidence, confront all witnesses and other evidence against him, and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. The individual shall have the right to remain silent and to be proceeded against in accord with the rules of evidence. At the conclusion of the hearing the magistrate, mental hygiene commissioner or circuit court shall find and enter an order stating whether or not there is probable cause to believe that such individual as a result of mental illness, mental retardation or addiction is likely to cause serious harm to himself or others.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Determination of competency of defendant to stand trial and of criminal responsibility; examination; commitment.

(a) Whenever a court of record, or in the instance of a defendant charged with public intoxication a magistrate or other judicial officer, believes that a defendant in a felony
case or a defendant in a misdemeanor case in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any stage of the proceedings after the return of an indictment or the issuance of a warrant or summons against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist, or in the instance of an individual charged with public intoxication, an alcoholism counselor: Provided, That with the exception of subsections (a) and (g) of this section, no other subsection in this section nor any other provision of this article shall apply to individuals charged with public intoxication pursuant to section nine, article six, chapter sixty of this code.

(b) After the examination described in subsection (a) of this section, the court of record may order that the person be admitted to a mental health facility designated by the director of health for a period not to exceed twenty days for observation and further examination if the court has reason to believe that such further observation and examination are necessary in order to determine whether mental illness, mental retardation or addiction have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. If, before the expiration of such twenty-day period, the examining physician believes that observation for more than twenty days is necessary, he shall make a written request to the court of record for an extension of the twenty-day period specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court of record may by order extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of observation.

(c) At the conclusion of each examination or observation period provided for herein, the examining psychiatrists, or psychiatrist and psychologist, shall forthwith give to the court of record a written signed report of their findings on the issue of competence to stand trial or criminal respon-
sibility. Such report shall contain an opinion, supported by clinical findings, as to whether the defendant is in need of care and treatment.

(d) Within five days after the receipt of the report on the issue of competency to stand trial, or if no observation pursuant to subsection (b) of this section has been ordered, within five days after the report on said issue following an examination under subsection (a) of this section, the court of record shall make a finding on the issue of whether the defendant is competent for trial. A finding of incompetence for trial shall require proof by a preponderance of the evidence. Notice of such findings shall be sent to the prosecuting attorney, the defendant and his counsel. If the court of record orders or if the defendant or his counsel on his behalf within a reasonable time requests a hearing on such findings, a hearing in accordance with section two of this article shall be held by the court of record within ten days of the date such finding or such request has been made.

(e) After a conviction and prior to sentencing, the court of record may order a psychiatric or other clinical examination and, after such examination, may further order a period of observation in a mental health facility designated by the director of health. Such a period of observation or examination shall not exceed forty days.

If after hearing conducted pursuant to the procedures prescribed in subsection (c), section four, article five of this chapter, the court of record makes the findings specified in section four, article five of this chapter or finds that the convicted individual would benefit from treatment in a mental health facility, the court may enter an order of commitment in accord with section four, article five for treatment in a mental health facility designated by the director of health.

(f) In like manner, in accordance with procedures set forth in subsections (a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent or neglected juvenile in a mental health facility to aid the court in its disposition. The period of observation shall not exceed forty days.
(g) On and after midnight on the last day of June, one thousand nine hundred eighty-three, if a person charged with public intoxication is incapacitated at the time a warrant or summons is issued, the court, magistrate or other judicial officer may as provided by article six, chapter sixty of this code, order the individual detained in the nearest mental health facility providing appropriate care, or other detention facility as defined in section fourteen, article one of this chapter, to determine the individual's competence to stand trial and criminal responsibility and require the preparation and submission by that facility of a report which shall in addition to determining the individual's competence and criminal responsibility shall also describe any suggested or proposed methods of care or treatment which may be appropriate. Such order shall stipulate the return of the individual to the court, magistrate or other judicial officer or his release if bond has been posted or a summons issued in lieu of a warrant, when the individual is no longer incapacitated. But in no case may the individual be kept longer than forty-eight hours unless during the forty-eight hours, civil commitment proceedings pursuant to article five of this chapter are initiated by qualified personnel at the mental health facility or other facility in which the individual is detained and detention is ordered pursuant to article five of this chapter: Provided, That whenever the director of the facility initiates civil proceedings within forty-eight hours, he shall immediately notify the judicial officer who ordered the individual detained that such proceedings have commenced: Provided, however, that the judicial officer may then modify his order and may continue the criminal proceedings in his court until a diagnosis of alcoholism has been made: Provided further, That once a diagnosis is made, the judicial officer shall find the individual not guilty by reason of addiction as provided by section nine, article six, chapter sixty of the code and shall immediately initiate civil commitment proceedings unless such proceedings have already begun and are proceeding:

(1) If at any time during the forty-eight hours the individual requires acute medical care or because of overtly dangerous behavior needs security beyond the capability of the mental health facility where he is being detained, the sheriff
of the county in which the facility is located shall at the
request of the facility director transport the individual to a
more appropriate facility such as a general hospital, or a state
hospital or detention facility selected by said director.

(2) No law-enforcement officer, physician, mobile inten-
sive care paramedic, emergency medical service attendant or
staff member or employee of any mental health facility, hos-
pital or detention facility may be held criminally liable for
carrying out any provision set forth in this subsection or any
procedure specified therein or be held civilly liable in damages
to an incapacitated person because of carrying out any pro-
vision set forth in this subsection or any procedure specified
herein for dealing with an individual charged with public in-
toxication unless for gross negligence or willful or wanton
injury.

(3) Any person who is given transportation to or from,
or who is examined or treated at, a mental health facility,
hospital or detention facility in accordance with, and because
of, the provisions of this section, whether such person was
incapacitated or not or whether he gave his consent or not,
shall be liable in implied contract to the person who, or men-
tal health facility, hospital or detention facility or other ap-
propriate agency which, provided such transportation, examin-
ation or treatment, for the reasonable cost thereof. No person
may be denied such services because of inability or failure
to pay such costs nor shall any effort be made to obtain pre-
payment of such costs or any portion thereof.

CHAPTER 60.
STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin and
shall include synthetic ethyl alcohol but not denatured alcohol.
"Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of non-intoxicating beer.

"Nonintoxicating beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by section two, article sixteen, chapter eleven.

"Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

"Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whiskey, cordials and gin.

"Alcoholic liquor" shall include alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

"Original package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

"Sale" shall mean any transfer, exchange or barter in any manner or by any means, for a consideration, and shall include all sales made by principal, proprietor, agent or employee.

"Selling" shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

"Person" shall mean an individual, firm, partnership, corporation or voluntary association.

"Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

"Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.
“Brewery” shall mean an establishment where beer is manufactured or in any way prepared.

“Winery” shall mean an establishment where wine is manufactured or in any way prepared.

“Distillery” shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

“Public place” shall mean any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park or place of public resort or amusement.

“State liquor store” shall mean a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

“An agency” shall mean a drugstore, grocery store or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia alcohol beverage control commissioner.

“Department” shall mean the organization through which the commission exercises powers imposed upon it by this chapter.

“Commission” shall mean the West Virginia alcohol beverage control commissioner.

“Intoxicated” shall mean having one’s faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

*§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

(a) A person shall not:

*Clerk’s Note: This section was also amended by S.B. 542 which passed prior to H.B. 1540.
(1) Appear in a public place in an intoxicated condition;
(2) Drink alcoholic liquor in a public place;
(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
(4) Tender a drink of alcoholic liquor to another person in a public place;
(5) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the commission, without having first obtained written authority from the said commission therefor;
(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility. Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer he may, after issuance of such a citation transport the individual, to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by section seventeen, article eleven, chapter twenty-seven of the code; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this
subsection. If the individual is admitted to the hospital, the
officer shall issue a citation to the individual specifying a
date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer the
law-enforcement officer shall serve as the chief complaining
witness. The judicial officer must make a finding that there is
probative evidence that the individual may be guilty of the
charge of public intoxication. If such evidence is not pre-

tended, the charge shall be dismissed and the individual re-
leased. If sufficient evidence is presented, the judicial officer
shall issue a warrant and establish bail or issue a summons to
the individual. Once a warrant or summons has been issued,
the following actions may be taken: (1) If the individual is
no longer incapacitated, he may be released; (2) if the indi-
vidual is still incapacitated but a nonintoxicated person is
available to accept responsibility for him, he may be released
to the responsible person; or (3) if the individual is still in-
capacitated and no responsible person is available, the judi-
cial officer shall proceed under the provisions of article five
or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and
empowered to arrest and hold in custody, without a warrant,
until complaint may be made before a judicial officer and a
warrant or summons issued, any person who in the presence
of the law-enforcement officer violates any one or more of
subdivisions (1) through (6), subsection (a) of this section:
Provided, That the law-enforcement officer may use reasonab-
le force to prevent harm to himself, the individual arrested or
others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a)
of this section shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be sentenced by a judicial officer in
accordance with the following options: (1) Upon first offense,
a fine of not less than five dollars nor more than one hundred
dollars and not more than sixty days in jail or completion of
an alcohol education program of not more than six hours' 
duration at the nearest community mental health-mental re-
tardation center. If the individual, prior to conviction, agrees to
voluntarily attend the alcohol education program, the judicial
officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), (3) or (4), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than one hundred dollars, or confined in jail not more than sixty days, or both such fine and imprisonment. Any person who violates subdivision (5) or (6), subsection (a) of this subsection shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not less than sixty days nor more than twelve months, or both such fine and imprisonment, and upon conviction of a second or subsequent offense he shall be guilty of a felony and shall be confined in the
AN ACT to amend and reenact sections one, two, three, seven and eight, article five, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to local option election for the sale of alcoholic liquors within a county, magisterial district or municipality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality.

§60-5-2. Election called on petition of five percent of qualified voters.

§60-5-3. Form of petition.

§60-5-7. Discontinuance of state stores and agencies in local option territory.

§60-5-8. When another election may be held.

§60-5-1. Election in county, magisterial district or municipality.

1 A county, magisterial district or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county, magisterial district or municipality.

6 A local option election shall not be held within sixty days of a general or municipal election.
§60-5-2. Election called on petition of five percent of qualified voters.

1 The county commission, or the governing body of the municipality, as the case may be, shall call a special "local option election" upon the filing of a petition signed by not less than five percent of the qualified voters within the county, a magisterial district or municipality.

§60-5-3. Form of petition.

1 The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (magisterial district) (municipality) of ......... ......... ..., do hereby petition that a special election be held within the county (city, town) of ..................... on the ................ day of ....................., 19......, upon the following question:

Shall the sale of alcoholic beverages under the West Virginia alcohol beverage control commissioner be permitted in ..................... .......

Name Address Date
(Post office or street and number)

§60-5-7. Discontinuance of state stores and agencies in local option territory.

1 Within thirty days after a "local option election" in which a majority has voted "No," the commission shall close all state stores and discontinue all agencies situated within the county, the magisterial district or municipality.

§60-5-8. When another election may be held.

1 When a "local option election" has been held in a county, a magisterial district or municipality, another such election shall not be held for a period of two years; except that an election may be held within a municipality without regard to an election held in or the time limit applicable to the county within which the municipality, or a part thereof, is located.
CHAPTER 9

(Com. Sub. for S. B. 668—By Mr. Tucker and Mr. Heck)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article, relating to the sale of wines and relating to providing that part III of this article shall apply to suppliers and distributors of wine; definition of supplier; changing the gallonage tax to liter tax; changing point of taxation from distributor to supplier; eliminating reports from those who supply distributors; requiring notice of assessment by certified mail; eliminating section on collection by distraint; providing for collection of taxes; forfeiture of bond by suppliers; and requiring bond of distributors.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.
§60-8-4. Liter tax.
§60-8-6. License or registration required for sale or shipment of wine.
§60-8-11. Notice of assessment; petition for reassessment.
§60-8-15. Collection by action or suit.
§60-8-26. Forfeiture of bond.
§60-8-29. Bond required of distributors and suppliers.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

1 (a) The provisions of part II of this article shall have 2 general application to the distribution and retail sale of 3 wine in this state. The provisions of part III of this article
shall relate solely to the distribution and the regulation of suppliers and 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.

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

2 “Commissioner” means the West Virginia alcohol beverage control commissioner.

3 “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.

4 “Fortified wine” shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.

5 “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 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. 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.

“Supplier” means any manufacturer, producer,
processor, distributor or supplier of wine who sells or offers
to sell or solicits or negotiates the sale of wine to any
licensed West Virginia distributor.

“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 are
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 the inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count.

§60-8-4. Liter tax.

1 The tax of one dollar per gallon and in like ratio on other volumes heretofore levied and imposed on all wine sold by distributors to retailers is continued through the thirtieth day of April, one thousand nine hundred eighty-three. There is also hereby levied and imposed on all wine in the inventory of distributors at the end of business on the thirtieth day of April, one thousand nine hundred eighty-three, a tax of twenty-six and four hundred six-thousandths cents per liter.

10 Before the sixteenth day of May, one thousand nine hundred eighty-three, every distributor shall make a written report under oath to the commissioner showing the quantity, label and alcoholic content of wine sold or purchased by the distributor during the preceding month, and shall report the quantity of liters in inventory at the end of business on the thirtieth day of April, one thousand nine hundred eighty-three, and at that time shall either fully pay the tax thereon imposed by this article on the wine sold prior to the first day of May, one thousand nine hundred eighty-three, and the wine in inventory at the end of business on the thirtieth day of April, one thousand nine hundred eighty-three, or shall pay such tax in three equal consecutive payments due respectively on the sixteenth day of May, the sixteenth day of June and the sixteenth day of July, one thousand nine hundred eighty-three.

26 There is further hereby levied and imposed on all wine sold after the thirtieth day of April, one thousand nine hundred eighty-three, by suppliers to distributors, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter.
Before the sixteenth day of June, one thousand nine hundred eighty-three, and the sixteenth day of each month thereafter, every supplier shall make a written report under oath to the commissioner showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors during the preceding month, and at the same time shall pay the tax imposed by this article on the wine sold to the distributor during the preceding month.

The reports 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.

No wine imported, sold or distributed in this state shall be subject to more than one gallonage or liter tax.

This section is to be effective upon date of passage.

§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. 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.

§60-8-11. Notice of assessment; petition for reassessment.

The commissioner shall give by certified mail 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 jeopardy assessment) of receipt of said assessment by the taxpayer or is received within such period.

§60-8-15. Collection by action or suit.

The commissioner may collect any tax due and unpaid under the provisions of this article either by appropriate legal proceedings in Kanawha County or by actions at law or other appropriate remedy resulting in the forfeiture of bond for failure to pay taxes and fees prescribed by section four of this article.

§60-8-26. Forfeiture of bond.

On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen of this article or upon finding of failure of a taxpayer to pay all taxes prescribed by section four of this article, which conviction, revocation or finding has become final, the licensee, former licensee or company registered as a supplier, as the case may be, shall forfeit any bond required by section twenty-nine of this article. The penal sum of any bond forfeited 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.

§60-8-29. Bond required of distributors and suppliers.

Each applicant for a distributors license or each company registered as a supplier shall furnish at the time of
ANATOMICAL GIFT ACT

application a bond with a corporate surety authorized to transact business in this state, payable to the state, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

The penal sum of the bond for distributors shall be ten thousand dollars, and the penal sum of the bond for suppliers shall be twenty-five thousand dollars.

CHAPTER 10
(S. B. 15—By Mrs. Spears)

[Passed March 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and four, article nineteen, chapter sixteen of said code; and to amend article twenty-six of said chapter eighteen by adding thereto a new section, designated section eight-d, all relating to transferring the powers and duties of the West Virginia anatomical board to the board of regents; authorizing the appointment of a board by the board of regents to perform the duties formerly performed by the West Virginia anatomical board; and specifying offenses and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and four, article nineteen, chapter sixteen of said code be amended and reenacted; and that said article twenty-six of said chapter eighteen be amended by adding thereto a new section, designated section eight-d, all to read as follows:
Chapter
18. Education.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.


§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.

1 The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

3 (1) The West Virginia board of regents for the scientific purposes of educational institutions for which it may receive or requisition dead bodies; or

6 (2) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

9 (3) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

12 (4) Any person operating a bank or storage facility for blood, arteries, eyes, pituitaries, or other human parts, for use in medical or dental education, advancement of medical or dental science, research, therapy or transplantation to individuals; or

15 (5) Any specified individual for therapy or transplantation needed by him.

19 The use, disposition and control of any such donated bodies or parts thereof by any such donee shall be in accordance with rules and regulations prescribed by the West Virginia board of regents.


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

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

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

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

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

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

"UNIFORM DONOR CARD
of
Print or type name of donor

In the hope that I may help others, I hereby make this
anatomical gift, if medically acceptable, to take effect
upon certification of my death. The words and marks
below indicate my desires.

I give: (a) ................. any needed organs or parts;
(b) .................. only the following organs or parts

Specify the organ(s) or part(s)
for the purposes of transplantation, therapy, medical
research or education;
(c) ............... my body for anatomical study if needed.

Limitation or special wishes, if any: ..................

Signed by the donor and the following two witnesses in
the presence of each other:

Signature of Donor Date of Birth of Donor
Date Signed City and State
Witness Witness

This is a legal document under the Uniform Anatomical
Gift Act or similar laws."
§18-26-8d. Powers and duties relating to anatomical gifts; requisition of body; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

(a) The board of regents may appoint one dean of a school of medicine, one dean of a school of dentistry and two chairmen of departments of anatomy of schools of medicine, all of whom shall constitute a board for the purpose of performing the duties of the board, which is hereby abolished, formerly known as the "West Virginia Anatomical Board." This new board shall be known as the "Board of Regents Anatomical Board," and shall hereinafter be referred to as the "board" for the purposes of this section. No more than one member of this board shall be from the same school. The board shall be responsible for making requisition for, receiving, and making disposition of the dead human bodies for the scientific uses and purposes of reputable educational institutions, within the state and elsewhere, having medical, osteopathy, dentistry or nursing schools. The board shall have full power to establish rules and regulations for its own government, and for the requisition, use, disposition and control of such bodies as may come under its authority by way of gift, pursuant to this article or pursuant to section four, article nineteen, chapter sixteen of this code. The board shall have authority to appoint such officers, employees and agents as may be necessary to carry out the purposes for which the board is organized. It shall keep a full and complete record of its transactions, showing, among other things, every dead human body coming under its authority, giving name, sex, age, date of death, place from which received, when and from whom received, which record shall be open at all times to the inspection of the attorney general and any prosecuting attorney in the state.

If the board of regents does not appoint a "board of regents anatomical board" as herein authorized,
then the board of regents itself shall perform the duties of the anatomical board as set forth herein.

(b) All dead human bodies which may come under the charge or control of any mortician, any officer or agent of the department of welfare or of any county commission or municipality, or any superintendent, officer or agent having the supervision of any prison, morgue, hospital, or other public institution in this state, and which may be required to be buried at public expense, shall be subject to the requisition of the board as provided in this section. No such body shall be delivered to the board if any person related to the deceased by blood or marriage shall make a statement in writing to that effect, and shall claim such body for burial, or shall make affidavit that he is unable to bear the expense of burial and desires that the deceased be buried at public expense. This statement and affidavit may be filed by any such relative with the person having charge and control of the body of the person so claimed, either before or after the death of such person.

No autopsy shall be performed on any unclaimed body without the written permission of the board, except upon the proper order of a duly authorized law-enforcement officer.

(c) It shall be the duty of any person who has charge or control of any unclaimed body, subject to requisition by the board, to give notice to the board of that fact by telephone or telegraph within twenty-four hours after such body comes under his control. Thereafter he shall hold the body subject to the order of the board for at least twenty-four hours after the sending of such notice. If the board makes requisition for the body within the twenty-four-hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to any educational institution described in section twelve of this article which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body.
(d) The board shall make suitable arrangements for the transportation of any body, or part or parts thereof, which may come under its authority to any educational institution as described in subsection (c).

(e) All expenses incurred in connection with the preservation, delivery and transportation of any such body delivered pursuant to the order of the board shall be paid by the educational institution receiving the body.

(f) No dead body shall be received or requisitioned by the board until the members of the board have filed a bond with the clerk of the circuit court of Kanawha County in a penalty of one thousand dollars, with good security, signed by a responsible person or persons, or by some surety company authorized to do business in this state, or have proved to such clerk that they are covered by a suitable bond in at least that amount, conditioned for the faithful performance of their duties.

(g) Any person who shall neglect, refuse or fail to perform any duty required of him by this section relating to the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Any person who fails to give the required notice that he has charge of an unclaimed body, subject to requisition by the board, shall also be personally liable for all burial expenses, if such body was buried at public expense, to the public agency that paid for the burial.

CHAPTER 11

(S. B. 56—By Mr. Davis)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section three-a, relating to authorizing the chief medical examiner or other authorized personnel to provide corneas from the body of a deceased person under his jurisdiction to the medical eye bank of West Virginia under certain conditions; and providing for immunity from civil liability in certain instances.

Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 three-a, to read as follows:

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-3a. Recovery of corneas; conditions; liability of medical examiner.

(a) In any case where a patient is in need of corneal tissue for a transplant, the chief medical examiner, assistant medical examiner, regional pathologist or any other persons designated to perform an autopsy in accordance with article twelve, chapter sixty-one of this code, may provide a cornea for transplant, under rules, regulations and procedures established by the chief medical examiner, upon the request of the medical eye bank of West Virginia, incorporated, under the following conditions:

(1) The body of the decedent having a suitable cornea for the transplant is under the jurisdiction of the chief medical examiner and an autopsy is required, in accordance with article twelve, chapter sixty-one of this code;

(2) The decedent’s next of kin makes no objections; and

(3) Transplanting of the cornea will not interfere with the course of any subsequent investigation or autopsy or alter the postmortem facial appearance.

(b) Neither the chief medical examiner, any assistant medical examiner, regional pathologist nor any other person designated to perform an autopsy in accordance with
section ten, article twelve, chapter sixty-one of this code and who provides a cornea in accordance with the provisions of this section, nor the medical eye bank of West Virginia, incorporated, shall be liable for any civil damages if the decedent's next of kin subsequently contends that his authorization was required.

CHAPTER 12

(Com. Sub. for H. B. 1054—By Mr. Farley)

[Passed February 23, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and seventeen, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public moneys and the state general revenue appropriations and expenditures; providing for enlarging the period within which warrants may be drawn after the close of a fiscal year for payment of bills for such fiscal year; expiration of unexpended appropriations; liabilities incurred by state boards, officers or employees which cannot be paid out of current appropriations; deletion of authority to pay any account or bill incurred during one fiscal year out of the appropriation for the following year; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12. Expiration of unexpended appropriations.

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations; long-term leasing.

§12-3-12. Expiration of unexpended appropriations.

1 Every appropriation which is payable out of the general revenue, or so much thereof as may remain undrawn at the end
of the year for which made, shall be deemed to have expired
at the end of the year for which it is made, and no warrant
shall thereafter be issued upon it: Provided, That warrants
may be drawn through the thirtieth day of September after
the end of the year for which the appropriation is made
if the warrants are in payment of bills for such year and have
been encumbered by the budget office prior to July first; but
appropriations for buildings and land shall remain in effect,
and shall not be deemed to have expired until the end of three
years after the passage of the act by which such appropriations
are made.

§12-3-17. Liabilities incurred by state boards, commissions, officers
or employees which cannot be paid out of current
appropriations; long-term leasing.

Except as provided in this section, it shall be unlawful
for any state board, commission, officer or employee: (1)
To incur any liability during any fiscal year which cannot
be paid out of the then current appropriation for such year
or out of funds received from an emergency appropriation;
or (2) to authorize or to pay any account or bill incurred
during any fiscal year out of the appropriation for the
following year: Provided, That nothing contained herein
shall prohibit entering into a contract or lease for
buildings, land and space, the cost of which exceeds the
current year's appropriation, even though the amount is not
available during the then current year, if the aggregate
cost does not exceed the amount then authorized by the
Legislature. Nothing contained herein shall repeal the provi-
sions of the general law relating to the expiration of appropria-
tions for buildings and land.

Subject to the provisions of chapter five-a, article five of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, the department of finance and administration
is hereby authorized to enter into long-term lease agreements
for buildings, land and space for periods longer than one
fiscal year. Such long-term lease agreements shall not be for
periods in excess of forty years and shall contain, in substance,
all the following provisions:
(1) That the department of finance and administration, as lessee, shall have the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the state Legislature or the federal government should subsequently fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the department of finance and administration before the end of the then current fiscal year.

Any member of a state board or commission or any officer or employee violating any provision of this section shall be personally liable for any debt unlawfully incurred or for any payment unlawfully made.

CHAPTER 13
(S. B. 322—By Mr. McGraw, Mr. President)

[Passed January 31, 1983: 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Governor's Office—Transfer Repayments, Account No. 1250, supplementing chapter twenty, acts of the Legislature, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue; and
WHEREAS, The Governor submitted to the Legislature an Executive Message, dated January 31, 1983, which contained revisions of the revenue estimates for the general revenue fund, of his recommended supplemental appropriations and of the general revenue fund statement; 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 1982-1983, 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. 1250, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be established and supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 8a—Governor’s Office—Board of Investments

5 Transfer Repayments

6 Acct. No. 1250

7 1 Repayment of Board of Investments

8 Transfers ........................................... $52,000,000

9 The purpose of this supplementary appropriation bill is 10 to establish and supplement the aforesaid account and item 11 therein for expenditure in the current fiscal year of 12 1982-1983. Such amount shall be available for expenditure 13 immediately upon the effective date of this bill, but only as 14 may be required to repay the Board of Investments for 15 principal and interest on transfers to the state of West 16 Virginia which shall be deposited in the general revenue 17 fund as authorized by West Virginia Code §12-6-9a.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Department of Finance and Administration, Account No. 2100, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; 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 1982-1983, 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. 2100, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sum to the designated line item:

<table>
<thead>
<tr>
<th></th>
<th>TITLE 2. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>2</td>
<td>FISCAL</td>
</tr>
<tr>
<td>3</td>
<td>19—Department of Finance and Administration</td>
</tr>
<tr>
<td>4</td>
<td>Acct. No. 2100</td>
</tr>
<tr>
<td>5</td>
<td>1 Personal Services</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year of 1982-1983. Such amount shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 15
(H. B. 1787—By Mr. Polan)

[Passed March 3, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the West Virginia Board of Regents (Control), Account No. 2790, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; 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 1982-83, 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. 2790, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sum to the designated item:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EDUCATIONAL

25—West Virginia Board of Regents (Control)

Acct. No. 2790

1 Personal Services $ 6,335,168

The purpose of this supplementary appropriation bill is to supplement the item in the aforesaid account by providing additional "Personal Services" moneys, with such moneys to be expended and distributed by the State Board of Regents, in its discretion and solely to institutions of higher education, as determined necessary to mitigate and alleviate the detrimental effects of compliance with the reserve requirements currently imposed on expenditures for such institutions. Such moneys shall be expendable immediately upon the effective date of the bill and in the current fiscal year 1982-83.

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 six months of fiscal year 1982-83, are released by the chief executive prior to the distribution or expenditure of all or any part of this appropriation, then the distribution or expenditure under this authority shall be pro rata reduced, dollar for dollar, according to the amount of funds authorized for release by the chief executive.

CHAPTER 16

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

[Passed February 11, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Teachers Retirement Board, Account No. 2980, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; 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 1982-1983, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2980, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, 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 EDUCATIONAL
4 37—Teachers Retirement Board
5 Acct. No. 2980
6 2 Supplemental Benefits for Annuitants $ 78,000
7 The purpose of this supplementary appropriation bill
8 is to supplement the aforesaid account and item therein
9 for expenditure in the current fiscal year of 1982-1983.
10 Such amount shall be available for expenditure imme-
11 diately upon the effective date of the bill.
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-three, to the Department of Welfare, Account No. 4050, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1982-83, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; 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 1982-83, 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 twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sums to the designated line items:

1 TITLE 2. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 HEALTH AND WELFARE
4 57—Department of Welfare
5 Acct. No. 4050
6 7 Social Services ........................................... $ 1,837,000
7 10 Medical Services ........................................ 2,700,000
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1982-83. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 18
(5. B. 252—Originating in the Committee on Finance)

[Passed March 4, 1983; 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-three, to the State Health Department—Mental Hospitals. Account No. 4160, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1982-83, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; 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 1982-83, 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. 4160, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sums to the designated line items:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

60—State Health Department—Mental Hospitals

Acct. No. 4160

1 Personal Services ....................................... $1,063,675
2 Current Expenses ........................................ 409,225
3 Repairs and Alterations ................................ 16,700
4 Equipment ................................................. 10,400

Total ......................................................... $1,500,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1982-83. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 19

(Com. Sub. for H. B. 1724—By Mr. Steptoe and Mr. Murphy)

[Passed March 3, 1983; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Department of Agriculture, Account No. 5100, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and
WHEREAS, It appears from such budget that there now remains a balance in the general revenue fund available for further appropriation during the fiscal year 1982-83, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5100, chapter twenty, acts of the legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following new item and sum:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 AGRICULTURE

4 80—Department of Agriculture

5 Acct. No. 5100

6 5a Gypsy Moth Spray Program ....................... $216,000

7 The purpose of the bill is to supplement the aforesaid account and new item therein, with such amount being available for expenditure upon the effective date of this bill and in the current fiscal year 1982-83.

CHAPTER 20

(Com. Sub. for H. B. 1507—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 5, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the West Virginia Public Legal Services Council, Account No. 5900, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.
WHEREAS, The Governor submitted to the Legislature the Execu-
tive Budget Document, dated January 12, 1983, which included a
statement of the state fund, general revenue, and as the same was
revised by the Governor by Executive Message No. 4, dated January
31, 1983; 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 1982-83, 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. 5900, chapter twenty, acts of the Legislature,
regular session, one thousand nine hundred eighty-two, known as
the budget bill, be supplemented by adding the following new item
and sum:

TITLE 2. APPROPRIATIONS.
Section 1. Appropriations for general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS
94—West Virginia Public Legal Services Council
Acct. No. 5900

11a. Appointed Counsel $600,000

The purpose of this supplementary appropriation bill is to
supplement the aforesaid account and new item therein for ex-
penditure in the current fiscal year of 1982-83. Such amount
shall be available for expenditure immediately upon the effect-
tive date of the bill.

CHAPTER 21
(H. B. 1658—By Mr. Polan)

[Passed February 18, 1983; 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 Fi-
nance and Administration, Account No. 2100, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 2100, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, be supplemented, amended and transferred to read as follows:

1

**TITLE 2. APPROPRIATIONS.**

2

**Section 1. Appropriations from general revenue.**

3

19—Department of Finance and Administration

4

Acct. No. 2100

5 1 Personal Services ........................................ $ 2,069,845
6 2 Current Expenses .......................................... 1,101,445

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

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**CHAPTER 22**

(S. B. 635—Originating in the Committee on Finance)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

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

<table>
<thead>
<tr>
<th>Title</th>
<th>Appropriations from other funds.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 Title 2. Appropriations.</td>
</tr>
<tr>
<td>2</td>
<td>Section 2. Appropriations from other funds.</td>
</tr>
<tr>
<td>3</td>
<td>102—State Department of Highways</td>
</tr>
<tr>
<td>4</td>
<td>Acct. No. 6700</td>
</tr>
<tr>
<td>5</td>
<td>TO BE PAID FROM STATE ROAD FUND</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>$45,080,000</td>
</tr>
<tr>
<td>2</td>
<td>Maintenance, State Local Services</td>
<td>58,049,000</td>
</tr>
<tr>
<td>3</td>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>9,520,000</td>
</tr>
<tr>
<td>4</td>
<td>Inventory Revolving</td>
<td>1,282,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment Revolving</td>
<td>3,800,000</td>
</tr>
<tr>
<td>6</td>
<td>General Operations</td>
<td>16,272,000</td>
</tr>
<tr>
<td>7</td>
<td>Debt Service</td>
<td>85,200,000</td>
</tr>
<tr>
<td>8</td>
<td>Interstate Construction</td>
<td>129,700,000</td>
</tr>
<tr>
<td>9</td>
<td>Other Federal Aid Programs</td>
<td>92,843,000</td>
</tr>
<tr>
<td>10</td>
<td>Appalachian Program</td>
<td>22,300,000</td>
</tr>
<tr>
<td>11</td>
<td>Nonfederal Aid Construction</td>
<td>6,016,000</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td>$470,062,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement, amend and transfer certain moneys from items of 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 1982-
1983 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 23
(S. B. 636—Originating in the Committee on Finance)
[Passed March 3, 1983; 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 Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, 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 Department of Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations from other funds.

3 103—Department of Motor Vehicles

4 Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

6 2 Current Expenses $3,364.185
7 7 Public Employees Health Insurance 187,010
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts, as newly itemized for expenditure during the fiscal year 1982-83, shall be available for expenditure immediately upon the effective date of the bill.

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**CHAPTER 24**

*(H. B. 1785—By Mr. Polan)*

[Passed February 22, 1983; 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 Finance and Administration—Information Systems Services Division Fund, Account No. 8151, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

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

That items of the total appropriation of Account No. 8151, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, be supplemented, amended and transferred to read as follows:

<table>
<thead>
<tr>
<th>1</th>
<th>TITLE 2. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Section 2. Appropriations from other funds.</td>
</tr>
<tr>
<td>3</td>
<td>110—Department of Finance and Administration Information Systems Services Division Fund</td>
</tr>
<tr>
<td>4</td>
<td>Acct. No. 8151</td>
</tr>
<tr>
<td>5</td>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
</tr>
<tr>
<td>7</td>
<td>1 Personal Services ........................................... $2,574,691</td>
</tr>
<tr>
<td>8</td>
<td>6 Public Employees Health Insurance ....................... 185,980</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, with no new moneys being appropriated hereby. The amounts, as newly itemized for expenditure during the fiscal year 1982-83, shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 25
(H. B. 1372—By Mr. Polan)

[Passed February 23, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, of the state certain unexpended and unencumbered amounts of the items and total existing appropriation of the Legislature-Joint Expenses, Account No. 1030, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1030, items one through four thereof and including the balances reappropriated from fiscal year 1981-82 which were transferred, forwarded and credited to such items on July 1, 1982, for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and the sum of three million five hundred thousand dollars be caused to expire into the state fund, general revenue, of the state, thereby reducing the total amounts in all such line items, with the amounts of such line items reductions to be as follows:


**TITLE 2. APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**LEGISLATIVE**

<table>
<thead>
<tr>
<th>3—Joint Expenses Acct. No. 1030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Joint Committee on Government and Finance</td>
</tr>
<tr>
<td>2 To pay cost of Legislative Printing</td>
</tr>
<tr>
<td>3 Other Legislative Committees</td>
</tr>
<tr>
<td>4 Commission on Interstate Cooperation</td>
</tr>
</tbody>
</table>

Total $3,500,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue, of the state the sum of three million five hundred thousand dollars of the unexpended and unencumbered moneys in the existing legislative appropriation of this account, line items one through four thereof and the total amounts in such line items as the same were increased through transfer, forwarding and crediting thereto of the reappropriated balances from fiscal year 1981-82, for expenditure in the current fiscal year 1982-83. The amount by which each existing line item is to be reduced, totaling a reduction of three million five hundred thousand dollars, is set forth in this bill. Such amount shall be immediately expired into the state fund, general revenue, and available for other and further appropriation upon the effective date of the bill.

**CHAPTER 26**

(H. B. 2041—By Mr. Polan)

[Passed March 12, 1983: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the
oil and gas reclamation fund, Account No. 8093-16, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of four hundred thousand dollars of the balances in Account No. 8093-16, including any balances carried forward to such special fund on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire from such special revenue fund and into the state fund, general revenue of the state, and with such amount to be thereafter available for other and further appropriation upon the effective date of this bill.

1 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the unexpended and unencumbered amounts of the special revenue fund, the oil and gas reclamation fund, and into the state fund, general revenue of the state, the sum of four hundred thousand dollars, such moneys being formerly appropriated by the language of "Sec. 9. Special revenue appropriations." section in the budget bill for the current fiscal year 1982-83.

CHAPTER 27
(H. B. 2042—By Mr. Polan)

An Act supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revolving revenue fund, Account No. 8421-09, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

That the sum of five hundred thousand dollars of the balances in Account No. 8421-09, including balances carried forward on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the special revolving revenue fund and into the state fund, general revenue of the state, the sum of five hundred thousand dollars, such moneys being formerly appropriated by the language of "Sec. 9. Special revenue appropriations." section in the budget bill for the current fiscal year 1982-83.

CHAPTER 28
(H. B. 2043—By Mr. Polan)
[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special oil and gas conservation fund, Account No. 8096-06, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of eight hundred thousand dollars of the balances in Account No. 8096-06, including any balances carried forward to such fund on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year
1982-83, as appropriated by chapter twenty, acts of the Legislature, 
regular session, one thousand nine hundred eighty-two, known as the 
budget bill, be supplemented, amended, reduced and caused to 
expire from such special revenue fund and into the state fund, 
general revenue of the state, and with such amount to be thereafter 
available for other and further appropriation upon the effective date 
of this bill.

The purpose of this supplementary appropriation bill is 
to supplement, amend, reduce and cause to expire out of the 
unexpended and unencumbered amounts of the special oil and 
gas conservation fund and into the state fund, general revenue 
of the state, eight hundred thousand dollars of the moneys 
formerly appropriated by the language of “Sec. 9. Special 
revenue appropriations.” section in the budget bill for the cur-
tent fiscal year 1982-83.

CHAPTER 29
(Com. Sub. for H. B. 1150—By Mr. Speaker, Mr. See)

[Passed March 16, 1983; in effect from passage. Approved by the Governor with
deletions and reductions, March 21, 1983. Subsequently, in mandamus
proceedings in the Supreme Court of Appeals, the Court commanded
and directed the Clerk of the House of Delegates to publish
Acct. Nos. 4160 and 4900 as passed by the Legislature.
See Clerk’s Notes on pages 136 and 139.]

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

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.
§5. Maximum expenditures.
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-four.

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-four” shall mean the period from July first, one thousand nine hundred eighty-three through June thirtieth, one thousand nine hundred eighty-four.

“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.

“Lands” shall mean the purchase of real property or interest in real property.

“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.

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.
### APPROPRIATIONS

**TITLE 2. APPROPRIATIONS.**

§1. Appropriations from general revenue.

§2. Appropriations of federal funds.

#### AGRICULTURE

- Department of agriculture—Acct. No. 5100
- Department of agriculture (agricultural awards)—Acct. No. 5150
- Department of agriculture (division of rural resources)—Acct. No. 5130
- Department of agriculture (meat inspection)—Acct. No. 5140
- Department of agriculture (soil conservation committee)—Acct. No. 5120
- Farm management commission—Acct. No. 5110

#### BUSINESS AND INDUSTRIAL RELATIONS

- Bureau of labor and department of weights and measures—Acct. No. 4500
- Department of mines—Acct. No. 4600
- Interstate commission on Potomac river basin—Acct. No. 4730
- Ohio river valley water sanitation commission—Acct. No. 4740
- State athletic commission—Acct. No. 4790
- West Virginia air pollution control commission—Acct. No. 4760
- West Virginia nonintoxicating beer commissioner—Acct. No. 4900
- West Virginia racing commissions—Acct. No. 4950
- West Virginia state aeronautics commission—Acct. No. 4850

#### CORRECTIONS

- Department of corrections—(central office)—Acct. No. 3680
- Department of corrections—(correctional units)—Acct. No. 3770
- Department of corrections—(probation and parole board)—Acct. No. 3650
- West Virginia penitentiary—Acct. No. 3750

#### CONSERVATION AND DEVELOPMENT

- Department of natural resources—Acct. No. 5650
- Geological and economic survey—Acct. No. 5200
- Public land corporation—Acct. No. 5660
- Water development authority—Acct. No. 5670
- West Virginia railroad maintenance authority—Acct. No. 5690

#### EDUCATIONAL

- Department of culture and history—Acct. No. 3510
- Educational broadcasting authority—Acct. No. 2910
- Marshall University (medical school)—Acct. No. 2840
- State board of education (vocational division)—Acct. No. 2890
- State department of education—Acct. No. 2860
- State Department of education (aid for exceptional children)—Acct. No. 2960
- State department of education (school lunch program)—Acct. No. 2870
- State department of education (state aid to schools)—Acct. No. 2950
- State FFA-FHA camp and conference center—Acct. No. 3360
- Teachers retirement board—Acct. No. 2980
- West Virginia board of regents—Acct. No. 2800
- West Virginia board of regents (control)—Acct. No. 2790
- West Virginia college of osteopathic medicine—Acct. No. 2810
- West Virginia library commission—Acct. No. 3500
- West Virginia schools for the deaf and the blind—Acct. No. 3330
- West Virginia University (medical school)—Acct. No. 2850

#### EXECUTIVE

- Governor's office—Acct. No. 1200
- Governor's office (civil contingent fund)—Acct. No. 1240
- Governor's office (custodial fund)—Acct. No. 1230
- Office of economic and community development—Acct. No. 1210
- Office of emergency services—Acct. No. 1300
## Appropriations

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- Auditor's office (general administration)—Acct. No. 1500
- Auditor's office (social security)—Acct. No. 1510
- Auditor's office (unemployment compensation)—Acct. No. 1520
- Department of finance and administration—Acct. No. 2100
- Municipal bond commission—Acct. No. 1700
- State board of insurance—Acct. No. 2250
- State tax department—Acct. No. 1800
- Treasurer's office—Acct. No. 1600
- Treasurer's office (school building sinking fund)—Acct. No. 1650

**HEALTH AND HUMAN SERVICES**
- Commission for the blind—Acct. No. 4450
- Department of human services—Acct. No. 4050
- Department of veterans affairs—Acct. No. 4040
- Department of veterans affairs—(veterans home)—Acct. No. 4010
- Solid waste disposal—Acct. No. 4020
- State board of education (rehabilitation division)—Acct. No. 4400
- State commission on aging—Acct. No. 4060
- State health department—Acct. No. 4000
- State health department—(mental hospitals)—Acct. No. 4160
- State health department—(public hospitals)—Acct. No. 4170
- State health department—(retardation centers)—Acct. No. 4150

**INCORPORATING AND RECORDING**
- Secretary of state—Acct. No. 2500

**JUDICIAL**
- Supreme Court—General Judicial—Acct. No. 1110

**LEGAL**
- Attorney general—Acct. No. 2400
- Commission on uniform state laws—Acct. No. 2450

**LEGISLATIVE**
- House of Delegates—Acct. No. 1020
- Joint expenses—Acct. No. 1030
- Senate—Acct. No. 1010

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- Human rights commission—Acct. No. 5980
- Insurance commissioner—Acct. No. 6160
- State fire commission—Acct. No. 6170
- West Virginia civil service system—Acct. No. 5840
- West Virginia public employees insurance board—Acct. No. 6150
- West Virginia public employees retirement board—Acct. No. 6140
- West Virginia public legal services council—Acct. No. 5990
- Women's commission—Acct. No. 6000

**PROTECTION**
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- Department of public safety—Acct. No. 5700

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§4. Appropriations of federal funds.

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- Board of regents (special capital improvement fund)—Acct. No. 8840
- Board of regents (state system registration fee—revenue bond construction fund)—Acct. No. 8845
Board of regents (state system registration fee—
special capital improvements fund—capital improvement
and bond retirement fund)—Acct. No. 8835 .......................... 158
Board of regents (state system tuition fee—
special capital improvement fund—capital improvement
and bond retirement fund)—Acct. No. 8855 .......................... 159
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Department of finance and administration
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(information system services division fund)—Acct. No. 8151 .......................... 152
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Public service commission—Acct. No. 8280 .......................... 154
Public service commission (gas pipeline division)—Acct. No. 8285 .......................... 154
Public service commission (motor carrier division)—Acct. No. 8290 .......................... 155
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State health department—hospital services revenue account (special fund)
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Treasurer’s office—(abandoned and unclaimed property)—Acct. No. 8000 .......................... 150
West Virginia alcohol beverage control commissioner—Acct. No. 9270 .......................... 162
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medical center revenue fund)—Acct. No. 9285 .......................... 163
West Virginia University—(medical center)—Acct. No. 9280 .......................... 163

PAYABLE FROM WORKERS’ COMPENSATION FUND

Workers’ compensation commissioner—Acct. No. 9000 .......................... 161

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Adjutant general—(state militia)—Acct. No. 5800 .......................... 165
Crime victim reparations—Acct. No. 8412 .......................... 165
Governor’s office—(civil contingent fund)—Acct. No. 1240 .......................... 164
West Virginia board of regents—(Control)—Acct. No. 2790 .......................... 164
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§7. Reappropriations.

§8. Appropriations from federal block grants.

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Revenue sharing trust fund—(state tax department)—Acct. No. 9750 169

§11. Reappropriations—Revenue sharing trust fund.

§12. Appropriations from countercyclical fiscal assistance trust fund.

§13. Special revenue appropriations.

§14. State improvement fund appropriations.

§15. Specific funds and collection accounts.

§16. Appropriations for refunding erroneous payment.

§17. Municipal bond commission deficiencies.

§18. Appropriations to pay costs of publication of delinquent corporations.

§19. Appropriations for local governments.

§20. Total appropriations.


1 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-four.

1 Sec. 2. Appropriations of federal funds.—In accordance with Chapter 4, Article 11, Federal Funds are 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 expendi-
ture during the fiscal year one thousand nine hundred eighty-four.

**LEGISLATIVE**

<table>
<thead>
<tr>
<th>Acct. No. 1010</th>
<th>Federal Funds Fiscal Year 1983-84</th>
<th>State General Revenue Fiscal Year 1983-84</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members $</td>
<td>$ 130,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Officers and Employees $</td>
<td>500,000</td>
</tr>
<tr>
<td>4</td>
<td>Expenses of Members $</td>
<td>100,000</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Contingent Fund $</td>
<td>200,000</td>
</tr>
<tr>
<td>7</td>
<td>Printing Blue Book $</td>
<td>110,000</td>
</tr>
<tr>
<td>8</td>
<td>Total $</td>
<td>$ 1,040,000</td>
</tr>
</tbody>
</table>

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

The appropriations for the Senate for the fiscal year 1982-83 are to remain in full force and effect, and are hereby reappropriated to June 30, 1984.

Any balances so reappropriated may be transferred and credited to the 1983-84 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 pre-
paration 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 requi-
sition 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, or the President of the Senate 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, or the President of the Senate shall have authority
to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff per-
personel during and between sessions of the Legislature, notwith-
standing any such Senate resolution, to be fixed by the Presi-
dent of the Senate. The Clerk is hereby authorized to draw
his requisition for the payment of all such staff personnel upon
the State Auditor, payable out of the appropriation for Com-
pensation and per diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate for such ser-

For duties imposed by law and the Senate, the Clerk of the Senate shall be paid a monthly salary as provided in Senate resolution adopted January 1983, 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>$699,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>$460,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$475,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$667,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,301,000</td>
</tr>
</tbody>
</table>
The appropriations for the House of Delegates for the fiscal year 1982-83 are to remain in full force and effect, and are hereby reappropriated to June 30, 1984.

Any balance so reappropriated may be transferred and credited to the 1983-84 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 the approval of the Speaker, is authorized to draw his requisition 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 Fund or the Current Expenses and Contingent Fund of the House of Delegates, for such services.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in 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 Com-
ensation 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

1 Joint Committee on Government
2 and Finance $ 3,471,425
3 To pay cost of Legislative Printing $ 740,000
4 Rule Making Review Committee $ 50,000

Total $ 4,261,425

The appropriation for Joint Expenses for the fiscal year
1982-83 are to remain in full force and effect and are hereby reappropriated to June 30, 1984. Any balances so re-
appropriated may be transferred and credited to the 1983-84 accounts.

Upon written request of the Clerk of the Senate and the
Clerk of the House of Delegates, the State Auditor shall
transfer amounts between items of the total appropriation
in order to protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1 Personal Services $ 14,008,620
2 Other Expenses $ 2,692,058
3 Judges Retirement System $ 994,830
4 Other Court Costs $ 2,011,700
5 Judicial Training Program $ 100,000
6 Mental Hygiene Fund $ 250,000

Total $ 20,057,208

This appropriation shall be administered by the Admin-
istrative 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 re-
quired by law, for taxes and other items.

The appropriation for Judges Retirement System is to
be transferred to the Judges Retirement Fund, in accord-
ance with the law relating thereto upon requisition of the
Administrative Director of the State Supreme Court of Ap-
peals.

Any unexpended balance remaining in this appropriation
at the close of the fiscal year 1982-83 is hereby reappropriated
for expenditure during the fiscal year 1983-84.

**EXECUTIVE**

*5—Governor's Office*

Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</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>$927,160</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$386,405</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,340</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,377,905</strong></td>
</tr>
</tbody>
</table>

*6—Office of Economic and Community Development*

Acct. No. 1210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,636,976</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,490,427</td>
</tr>
<tr>
<td>Equipment</td>
<td>$13,106</td>
</tr>
<tr>
<td>The Economic Development Loan Fund</td>
<td>$1,250,000</td>
</tr>
<tr>
<td>Regional Council</td>
<td>$220,000</td>
</tr>
<tr>
<td>A.R.C. Assessment</td>
<td>$320,000</td>
</tr>
<tr>
<td>Partnership Grants</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Fire Departments</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Civil Air Patrol</td>
<td>$89,000</td>
</tr>
<tr>
<td>Emergency Assistance</td>
<td>$250,000</td>
</tr>
<tr>
<td>Coal Development</td>
<td>$277,279</td>
</tr>
<tr>
<td>Jobs Program</td>
<td>$0</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$18,336,885</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$28,924,160</strong></td>
</tr>
</tbody>
</table>
15 Transfer to State Spending Units 295,374 0
16 295,374

17 *Total ........................................... $ 42,674,114 $ 9,419,189

18 Any unexpended balance remaining in accounts “Federal State Coordination,” “Office of Criminal Justice and Highway Safety,” “Coal Development Authority” and “Regional Council” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

19 Any unexpended balance remaining in the account “Community Water Development Grant and Partnership Grants” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

20 Any unexpended balance remaining in accounts “Fire Departments,” “Milton Volunteer Fire Department”, “Emergency Assistance to Small Municipal and Public Service Districts Water and Sewage Systems” and “Flood” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

21 The amount appropriated for “Coal Development” shall not be used regarding any matter affecting health and safety.

7—Governor’s Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total ...... ...... $ — $ 321,912

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 ...... ...... $ — $ 1,150,000

2 Of the appropriation there may be expended, at the discre-

*Clerk’s Note: “National Youth Science Camp . . . 150,000” on line sixteen, Acct. 1210, was deleted by the Governor and the total on line seventeen was reduced from “9,569,189” to “9,419,189” to reflect the deletion.
tion of the Governor, an amount not to exceed $1,000 as
West Virginia’s contribution to the Interstate Oil Compact
Commission.

Any unexpended balance remaining in this appropriation
at the close of the fiscal year 1982-83 is hereby reappropriated
for expenditure during the fiscal year 1983-84.

The unexpended and unencumbered current balances in
Account No. 1240-08 and appropriation item “Southern West
Virginia Flood Disaster-Housing Program” is hereby re-
designated, as to purpose, as follows: “Governor’s Office—
Civil Contingent Fund—Jobs, McDowell and Mingo Counties.”
Any unexpended balance remaining in this appropriation
item, as redesignated, is hereby reappropriated for expenditure
during the fiscal year 1983-84.

9—Office of Emergency Services

<table>
<thead>
<tr>
<th>Account No. 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
</tr>
<tr>
<td>4 To Local Entities</td>
</tr>
<tr>
<td>5 Transfer to State Spending Units</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

FISCAL

10—Auditor’s Office—General Administration

<table>
<thead>
<tr>
<th>Account No. 1500</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
</tr>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Equipment</td>
</tr>
<tr>
<td>5 Microfilm</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>
11—Auditor’s Office—Social Security

Acct. No. 1510

To match contributions of
state employees for
Social Security—Total $18,229,000

The above appropriation is intended to cover the state’s share of social security cost for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers’ Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

12—Auditor’s Office—Unemployment Compensation

Acct. No. 1520

Unclassified—Total $1,900,000

The above appropriation is intended to cover the state’s share of unemployment compensation costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers’ Compensation Commission and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the unemployment compensation cost for their respective divisions.

Should this appropriation be insufficient to meet the requirements of the state spending units, from the General Revenue Fund, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the “Auditor’s Office—Unemployment Compensation” any amounts required for that department for costs in excess of this appropriation.
13—Treasurer’s Office
Acct. No. 1600

1 Salary of State Treasurer $42,000
2 Other Personal Services $677,422
3 Current Expenses $308,368
4 Equipment $30,000
5 Microfilm Program $10,000
6 Total $1,067,790

14—Treasurer’s Office—School Building Sinking Fund
Acct. No. 1650

1 Total $16,316,500
2 Any unexpended balance remaining in the appropriation for “Treasurer’s Office—School Building Sinking Fund” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

15—Municipal Bond Commission
Acct. No. 1700

1 Personal Services $74,687
2 Current Expenses $31,307
3 Equipment $1,050
4 Total $107,044

16—State Tax Department
Acct. No. 1800

1 *Personal Services $7,617,080
2 *Current Expenses $3,968,027
3 Repairs and Alterations $23,000
4 Equipment $121,488
5 Circuit Breaker Reimbursement $15,000
6 Multi-State Tax Compact $57,500
7 *Property Reappraisal Program $15,925,281
8 *Total $27,727,376

*Clerk’s Note: “Personal Services $7,977,080” was reduced by the Governor to “7,617,080” on line one and “Current Expenses $4,347,827” was reduced by the Governor to “3,968,027” on line two. Acct. No. 1800 and the total on line eight was reduced from “$28,467,176” to “$27,727,376” to reflect the reductions.
Any unexpended balance remaining in the appropriation for “Other Expenses” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

The above appropriation item “Property Reappraisal Program” is to be expended by the tax commissioner pursuant to general law and Article X, Section 1b of the Constitution of West Virginia for the conduct of the first statewide reappraisal of property subject to ad valorem taxation, as required by such constitutional amendment.

17—Department of Finance and Administration

<table>
<thead>
<tr>
<th>Acct. No. 2100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>Current Expenses</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>Equipment</td>
</tr>
<tr>
<td>Postage and Presort Mailing Expenses</td>
</tr>
<tr>
<td>Utilities</td>
</tr>
<tr>
<td>Public Transportation</td>
</tr>
<tr>
<td>Fire Service Fee</td>
</tr>
<tr>
<td>Building Equipment and Supplies</td>
</tr>
<tr>
<td>Southern Regional Education Board</td>
</tr>
<tr>
<td>Council of State Governments</td>
</tr>
<tr>
<td>National Governors Association</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

The Workers’ Compensation Commission, Department of Human Services, 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 Adminis-

* Clerk’s Note: Line fifteen, “Southern States Energy Board $19,171” and line sixteen, “Capitol Building Improvements $500” were both deleted by the Governor and the total on line seventeen was changed from “$6,656.283” to “$6,636,612” to reflect the deletion.
Appropriations

tration 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 1982-83 is hereby appropriated for expenditure during the fiscal year 1983-84.

State Department of Highways shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to the provisions of Chapter 17, Article 2A, Section 13 of the Code of West Virginia.

### 18—State Board of Insurance

#### Acct. No. 2250

<table>
<thead>
<tr>
<th>Description</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td></td>
<td>77,335</td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
<td>29,930</td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td>2,000</td>
</tr>
<tr>
<td>Premiums, Claims and</td>
<td></td>
<td>4,629,000</td>
</tr>
<tr>
<td>Other Expenses</td>
<td></td>
<td>4,738,265</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>4,738,265</strong></td>
</tr>
</tbody>
</table>

The above appropriation on lines 4 and 5 is for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies. Should this appropriation be insufficient to meet the requirements of the state spending units, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Board of Insurance any amounts required for that department for costs in excess of this appropriation.
Any and all of the funds appropriated for "Premiums, Claims and Other Expenses" may be transferred to a special account for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees.

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

**LEGAL**

**19—Attorney General**

Acct. No. 2400

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Attorney General</td>
<td>$</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>—</td>
</tr>
<tr>
<td>5 Publication of Reports and Opinions</td>
<td>—</td>
</tr>
<tr>
<td>6 To Protect the Resources or Tax Structure of the State in Controversies or Legal Proceedings</td>
<td>—</td>
</tr>
<tr>
<td>7 Affecting Same</td>
<td>—</td>
</tr>
<tr>
<td>8 Consumer Protection</td>
<td>—</td>
</tr>
<tr>
<td>Personal Services</td>
<td>205,036</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>55,801</td>
</tr>
<tr>
<td>Equipment</td>
<td>8,440</td>
</tr>
</tbody>
</table>

**Total** $2,419,714

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 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.
## Appropriations

### 20—Commission on Uniform State Laws

**Acct. No. 2450**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$12,000</td>
</tr>
<tr>
<td>To pay expenses of members of the Commission on Uniform State Laws.</td>
<td></td>
</tr>
</tbody>
</table>

### INCORPORATING AND RECORDING

#### 21—Secretary of State

**Acct. No. 2500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Secretary of State</td>
<td>$36,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$428,590</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$163,975</td>
</tr>
<tr>
<td>Equipment</td>
<td>$25,505</td>
</tr>
<tr>
<td>Certification of Primary and General Elections</td>
<td>$5,000</td>
</tr>
<tr>
<td>Publication of State Register</td>
<td>$88,975</td>
</tr>
<tr>
<td>Election Training Presentation</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$763,045</td>
</tr>
</tbody>
</table>

The Secretary of State shall fully utilize the above appropriation for “Publication of State Register” to undertake his mandatory duty to publish a state register of rules and regulations in conformity with chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

### Educational

#### 22—West Virginia Board of Regents (Control)

**Acct. No. 2790**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$108,470,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$22,945,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,100,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,100,000</td>
</tr>
<tr>
<td>Bureau of Coal Research</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>National Research Center for Coal</td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>

*Clerk’s Note: The figure on line two, Acct. No. 2790, was reduced by the Governor from "$23,582,932" to "$22,945,000".*
### Appropriations

<table>
<thead>
<tr>
<th>8</th>
<th>Transportation Services—</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>W.V.U. ..........................</td>
</tr>
<tr>
<td>10</td>
<td>Doctoral Research ..................</td>
</tr>
<tr>
<td>11</td>
<td>*Total ..................................</td>
</tr>
</tbody>
</table>

#### 23—West Virginia Board of Regents

<table>
<thead>
<tr>
<th>Acct. No. 2800</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>

#### 24—West Virginia College of Osteopathic Medicine

**Acct. No. 2810**

| 1 | Personal Services .................. | $1,860,000 |
| 2 | Current Expenses .................. | $803,000 |
| 3 | Repairs and Alterations .............. | $37,000 |
| 4 | Equipment .......................... | $56,000 |
| 5 | Total .................................. | $2,756,000 |

#### 25—Marshall University—Medical School

<table>
<thead>
<tr>
<th>Acct. No. 2840</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

*Clerk's Note: The total on line eleven, Acct. No. 2790, was reduced by the Governor from "$138,196,932" to "$137,559,000" to reflect the reduction on line two of the account.

**Clerk's Note: All of Acct. No. 2810 was reduced by the Governor as follows:**

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,535,000</td>
<td>$1,860,000</td>
</tr>
<tr>
<td>$1,094,000</td>
<td>$803,000</td>
</tr>
<tr>
<td>$50,000</td>
<td>$37,000</td>
</tr>
<tr>
<td>$77,000</td>
<td>$56,000</td>
</tr>
<tr>
<td>$3,756,000</td>
<td>$2,756,000</td>
</tr>
</tbody>
</table>
### 26—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>$14,253,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>6,566,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>300,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>375,000</td>
</tr>
<tr>
<td>5 Family Practice Residency Support Program</td>
<td>458,000</td>
</tr>
<tr>
<td>6 Intern and Residency Support</td>
<td>945,000</td>
</tr>
<tr>
<td>7 Capital Outlay</td>
<td>-0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$22,897,000</td>
</tr>
</tbody>
</table>

12 To be transferred to the West Virginia University—Medical School Fund upon the requisition of the Governor.

### 27—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>$1,942,064</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,007,686</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>1,100</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>17,400</td>
</tr>
<tr>
<td>5 Statewide Testing Program</td>
<td>774,999</td>
</tr>
<tr>
<td>Personal Services</td>
<td>66,124</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>398,875</td>
</tr>
<tr>
<td>Professional Competency Testing</td>
<td>310,000</td>
</tr>
<tr>
<td>6 Aid to Children’s Home</td>
<td>50,000</td>
</tr>
<tr>
<td>7 Regional Education Service</td>
<td></td>
</tr>
<tr>
<td>8 Agencies</td>
<td>424,460</td>
</tr>
<tr>
<td>9 Child Development Programs</td>
<td>486,561</td>
</tr>
<tr>
<td>10 Tuition Waiver</td>
<td>350,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$5,054,270</td>
</tr>
</tbody>
</table>

12 The above appropriation includes the State Board of Education and their executive office.
28—State Department of Education—School Lunch Program

Acct. No. 2870

1. Personal Services .......................... $ 316,122 $ 142,951
2. Current Expenses ......................... 560,883 15,512
3. Repairs and Alterations ................. 2,000 —
4. Equipment ................................ 8,000 —
5. Aid to Counties—Includes hot lunches and canning for hot lunches .................. 1,950,000
6. To Local Entities ......................... 27,098,055 —

29—State Board of Education—Vocational Division

Acct. No. 2890

1. Personal Services .......................... $ 867,112 $ 375,057
2. Current Expenses ......................... 485,479 152,426
3. Repairs and Alterations ................. 2,500 —
4. Equipment ................................ 7,000 6,780
5. Vocational Aid .............................. — 9,215,980
6. Adult Basic Education .................... — 776,100
7. Start Up Funds and Equipment for New and Existing Facilities .................. 1,250,000
8. New and Expanding Industries ........ 159,405
9. * ........................................... —
10. * .......................................... —
11. * .......................................... —
12. Brooke County Equipment ............... — 113,000
13. To Local Entities ......................... 5,813,248 —
14. * ........................................... —
15. * .......................................... —
16. * .......................................... —
17. *Total .................................... $ 7,175,339 $ 12,048,748

Any unexpended balance remaining in the appropriation for “New and Expanding Industries” at the close of the fiscal year

*Clerk's Note: Lines ten and eleven, “Programs for Unemployed Adults ......... 1,600,800”, lines fourteen and fifteen, “Hampshire County Vocational School ....... 247,500”, line sixteen, “Hardy County Vocational School ........ 106,106”, Acct. No. 2890, were deleted by the Governor and the total on line seventeen was changed from "$13,403,154" to "$12,048,748" to reflect the deletion.
20 1982-83 is hereby reappropriated for expenditure during the
21 fiscal year 1983-84.

* Clerk's Note: Lines twenty-two through thirty-two were deleted by the
Governor and prior thereto read as follows:

"The appropriation item "Programs for Unemployed Adults" above, may be
expended for conducting vocational training programs and providing related
services such as career assessment and counseling, remediation and job seeking
skills for unemployed adults. Allowable costs may include salaries for instruc-
tors and counselors, fixed costs, administration, instructional supplies, trans-
portation of students and purchase, rental, maintenance and repair of instruc-
tion equipment where necessary to offer such program; however, no more than
$200,000 may be expended for the purchase, rental, maintenance and repair
of instructional equipment."
ferred to Special Revenue Accounts for matching County and/or Federal Funds.

31—State Department of Education—State Aid to Schools

<table>
<thead>
<tr>
<th>Acct. No. 2950</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Professional Educators</td>
<td>$</td>
<td>$381,065,351</td>
</tr>
<tr>
<td>2 Service Personnel</td>
<td></td>
<td>134,683,348</td>
</tr>
<tr>
<td>3 Fixed Charges</td>
<td></td>
<td>58,176,453</td>
</tr>
<tr>
<td>4 Transportation</td>
<td></td>
<td>25,900,909</td>
</tr>
<tr>
<td>5 Administration</td>
<td></td>
<td>2,667,445</td>
</tr>
<tr>
<td>6 Other Current Expenses</td>
<td></td>
<td>33,523,665</td>
</tr>
<tr>
<td>7 Improve Instructional Programs</td>
<td></td>
<td>22,379,473</td>
</tr>
<tr>
<td>8 Basic Foundation Allowances</td>
<td></td>
<td>658,396,644</td>
</tr>
<tr>
<td>9 Less Local Share</td>
<td></td>
<td>98,907,647</td>
</tr>
<tr>
<td>10 Total Basic State Aid</td>
<td></td>
<td>559,488,997</td>
</tr>
<tr>
<td>11 Loss Reduction</td>
<td></td>
<td>2,699,443</td>
</tr>
<tr>
<td>12 Staffing Improvement</td>
<td></td>
<td>2,068,543</td>
</tr>
<tr>
<td>Professional Educators</td>
<td></td>
<td>1,339,765</td>
</tr>
<tr>
<td>Service Personnel</td>
<td></td>
<td>728,778</td>
</tr>
<tr>
<td>13 Increased Enrollment</td>
<td></td>
<td>800,000</td>
</tr>
<tr>
<td>14 Total</td>
<td></td>
<td>$565,056,983</td>
</tr>
</tbody>
</table>

32—State Department of Education—Aid for Exceptional Children

<table>
<thead>
<tr>
<th>Acct. No. 2960</th>
<th></th>
<th>---</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$</td>
<td>$280,842 $260,790</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
<td>362,062 118,980</td>
</tr>
<tr>
<td>3 Equipment</td>
<td></td>
<td>9,000 6,500</td>
</tr>
<tr>
<td>4 Out-of-State Instruction</td>
<td></td>
<td>428,000</td>
</tr>
<tr>
<td>5 Aid to Counties</td>
<td></td>
<td>6,475,670</td>
</tr>
<tr>
<td>County Grant Awards</td>
<td></td>
<td>6,054,303</td>
</tr>
<tr>
<td>Regional Education Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency Grants</td>
<td></td>
<td>212,000</td>
</tr>
<tr>
<td>Special State Projects</td>
<td></td>
<td>209,367</td>
</tr>
<tr>
<td>6 To Local Entities</td>
<td></td>
<td>7,567,680</td>
</tr>
</tbody>
</table>
The appropriation for “Out-of-State Instruction” may be expended to provide instruction, care, and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.

The appropriation for “Aid to Counties” may be expended by county or state operated institutions, including institutions housing juveniles, for the initiation, maintenance and/or improvements of special education programs including employment of new professional education personnel solely serving exceptional children; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovation and other costs directly related to the special education delivery process prescribed by the State Board of Education.

The appropriation for “Special State Projects” may be expended to support (1) an instructional materials center for visually handicapped children at the West Virginia Schools for the Deaf and the Blind, (2) the State Special Olympics program, (3) the West Virginia Advisory Council for the Education of Exceptional Children at the West Virginia College of Graduate Studies, and (4) statewide training activities or programs benefiting exceptional children.

33—Teachers' Retirement Board

Acct. No. 2980

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers’ Retirement Fund</td>
<td>$42,050,000</td>
</tr>
<tr>
<td>2</td>
<td>Supplemental Benefits for Annuitants</td>
<td>$4,650,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$46,700,000</td>
</tr>
</tbody>
</table>

The line item “Supplemental Benefits for Annuitants” may be transferred as required and shall be expended in accordance with the provisions of Chapter 115, Acts of the Legislature, Regular Session, 1982.

*Clerk's Note: Line seven, Acct. No. 2960, “Construction 200,000" was deleted by the Governor and the total on line eight was changed from "$7,489,940" to "$7,289,940" to reflect the deletion.*
### West Virginia Schools for the Deaf and the Blind

**Acct. No. 3330**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$3,010,164</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$790,462</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$109,327</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$109,335</td>
</tr>
<tr>
<td>5. Capital Outlay</td>
<td>$131,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$4,150,288</td>
</tr>
</tbody>
</table>

### State FFA-FHA Camp and Conference Center

**Acct. No. 3360**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$118,900</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$66,691</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$19,000</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$219,591</td>
</tr>
</tbody>
</table>

### West Virginia Library Commission

**Acct. No. 3500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$80,418  $924,742</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$34,215  $206,567</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td></td>
</tr>
<tr>
<td>4. Equipment</td>
<td></td>
</tr>
<tr>
<td>5. Per-Capita Grants</td>
<td></td>
</tr>
<tr>
<td>7. Library Matching Fund</td>
<td></td>
</tr>
<tr>
<td>8. <em>(Construction)</em></td>
<td></td>
</tr>
<tr>
<td>9. Films</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$114,633 $6,506,056</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for “Library Matching Fund (Construction)” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

*Clerk’s Note:* The figure on line eight, Acct. No. 3500, was reduced by the Governor from "$80,000" to "$50,000" and the total on line ten was changed from "$6,536,056" to "$6,506,056" to reflect the reduction.
### 37—Department of Culture and History

**Acct. No. 3510**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Budgeted</th>
<th>Appropriated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$40,000</td>
<td>$933,939</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$407,500</td>
<td>$282,231</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$2,500</td>
<td>$59,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$165,147</td>
<td>$3,000</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>$487,974</td>
<td>$653,722</td>
</tr>
<tr>
<td>Grants and Contractual Services</td>
<td>$40,000</td>
<td>$3,156,305</td>
</tr>
<tr>
<td>Department Programming Funds</td>
<td>$495,387</td>
<td></td>
</tr>
<tr>
<td>Outreach and Education</td>
<td>$97,564</td>
<td></td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>$97,823</td>
<td></td>
</tr>
<tr>
<td>Cultural Center Programs</td>
<td>$300,000</td>
<td></td>
</tr>
<tr>
<td>Historical Preservation</td>
<td>$184,776</td>
<td></td>
</tr>
<tr>
<td>Washington Carver Camp</td>
<td>$140,000</td>
<td></td>
</tr>
<tr>
<td><em>Grants, Fairs and Festivals</em></td>
<td>$374,250</td>
<td></td>
</tr>
<tr>
<td>Independence Hall</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$450,000</strong></td>
<td><strong>$3,156,305</strong></td>
</tr>
</tbody>
</table>

The above appropriation 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 reimbursement to the Department 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.

*Clerk's Note:* The figure on line ten, Acct. No. 3510, was reduced by the Governor from "$501,375" to "$374,250" and the total on line twelve was changed from "$3,283,430" to "$3,156,305" to reflect the reduction.
Any unexpended balance remaining in the appropriation for “Washington Carver Camp” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

CORRECTIONS

38—Department of Corrections—Probation and Parole Board

Acct. No. 3650

1 Salaries of Members of Board
   of Probation and Parole ... $    —    $ 75,000
2 Other Personal Services      —    $ 45,902
3 Current Expenses            —    $ 24,746
4 Repairs and Alterations     —    $ 300
5 Equipment                   —    $ 700

7 Total                      $ —    $ 146,648

39—Department of Corrections—Central Office

Acct. No. 3680

1 Personal Services          $    —    $ 438,906
2 Current Expenses           —    $ 244,709
3 Repairs and Alterations   —    $ 1,500
4 Equipment                  —    $ 160,270
5 Adult Female Offenders Contract
   Personal Services        —    25,000
   Current Expenses         —    1,003,750

6 Total                     $ —    $ 1,874,135

40—West Virginia Penitentiary

Acct. No. 3750

Any unexpended balance remaining in the appropriation for “Capital Outlay” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.
### APPROPRIATIONS

#### 41—Department of Corrections—Correctional Units

<table>
<thead>
<tr>
<th>Acct. No. 3770</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ —</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>—</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>—</td>
</tr>
<tr>
<td>5 *Capital Outlay</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>—</td>
</tr>
</tbody>
</table>

The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of the items 1, 2, 3 and 4 above.

#### HEALTH AND HUMAN SERVICES

#### 42—State Health Department

<table>
<thead>
<tr>
<th>Acct. No. 4000</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 1,818,176</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>13,831,267</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>1,500</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>19,830</td>
</tr>
<tr>
<td>5 Reimbursement to Community Mental Health and Mental Retardation Centers</td>
<td>—</td>
</tr>
<tr>
<td>6 Reimbursement to Community Behavioral Health Programs</td>
<td>—</td>
</tr>
<tr>
<td>7 for Social Services</td>
<td>—</td>
</tr>
<tr>
<td>8 State Aid to Local Agencies</td>
<td>—</td>
</tr>
</tbody>
</table>

*Clerk's Note: Line five, Acct. No. 3370, "Capital Outlay .... $4,000,000" was reduced by the Governor to "$3,000,000". The total on line six was reduced from "$19,550,969" to "$18,550,969" to reflect the reduction.*
### Appropriations

| 13 | Grants to Counties and EMS Entities | $1,900,000 |
| 15 | Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees | $1,430,000 |
| 18 | Foster Grandparents Stipends/Travel | $62,370 |
| 20 | Office of Chief Medical Examiner Personal Services | $971,886 |
| 21 | Hemophiliac Assistance Program | $120,052 |
| 23 | Placement Programs for the Developmentally Disabled | $2,289,800 |
| 24 | Primary Care Contracts to Community Health Centers | $1,403,090 |
| 26 | Agent Orange | $300,000 |
| 27 | Alcohol, Drug Abuse and D. D. Corporate Nonprofit Community Health Center F.M.H.A. | $2,136,000 |
| 30 | Mortgage Finance | $75,000 |
| 31 | Total | $15,670,773 |

### Department of Veterans Affairs—Veterans Home

<table>
<thead>
<tr>
<th>Acct. No. 4010</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Repairs and Alterations" and "Equipment" at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.
### Solid Waste Disposal

**Acct. No. 4020**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$86,570</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$37,764</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$500</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$124,834</td>
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</tbody>
</table>

### Department of Veterans Affairs

**Acct. No. 4040**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$624,410</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$120,321</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$9,500</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</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Study and Legal Fees</td>
<td>$5,000</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$780,231</td>
</tr>
</tbody>
</table>

Moneys in lines 6 and 7 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.

### Department of Human Services

**Acct. No. 4050**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$12,215,420</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$3,173,890</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$17,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$51,036</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td></td>
<td>$9,228,567</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>$3,719,856</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>$17,000</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>$41,757</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>5</td>
<td>*Assistance Payments</td>
<td>41,390,268</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>763,780</td>
</tr>
<tr>
<td>7</td>
<td>Indigent Burials</td>
<td>—</td>
</tr>
<tr>
<td>8</td>
<td>Social Services</td>
<td>1,200,000</td>
</tr>
<tr>
<td>9</td>
<td>Emergency Assistance</td>
<td>500,737</td>
</tr>
<tr>
<td>10</td>
<td>Medical Services</td>
<td>116,015,056</td>
</tr>
<tr>
<td>11</td>
<td>T. R. I. P.</td>
<td>—</td>
</tr>
<tr>
<td>12</td>
<td>Food Stamp (Value)</td>
<td>105,688,320*</td>
</tr>
<tr>
<td>13</td>
<td>Government Donated Food</td>
<td>—</td>
</tr>
<tr>
<td>14</td>
<td>(Value)</td>
<td>4,562,162*</td>
</tr>
<tr>
<td>15</td>
<td>Public Employees Retirement</td>
<td>508,393</td>
</tr>
<tr>
<td>16</td>
<td>Matching</td>
<td>—</td>
</tr>
<tr>
<td>17</td>
<td>Public Employees Health</td>
<td>484,517</td>
</tr>
<tr>
<td>18</td>
<td>Insurance</td>
<td>—</td>
</tr>
<tr>
<td>19</td>
<td>Handicapped Children</td>
<td>—</td>
</tr>
<tr>
<td>20</td>
<td>*Total</td>
<td>41,390,268</td>
</tr>
</tbody>
</table>

★For Information Only—Not included in Total

*Clerk’s Note: The second figure on line five, Acct. No. 4050, “Assistance Payments: 19,662,000” was reduced by the Governor to “$18,922,000”. The total on line twenty was also reduced from “$109,216,422” to “$108,476,422” to reflect the reduction.

**Clerk’s Note: All of lines twenty-one through thirty-one were deleted by the Governor and prior thereto read as follows:

“The additional appropriation of one million two hundred thousand dollars in assistance payments line items over and above the Executive Budget recommendation is to be used for expansion of the Aid to Families with Dependent Children program exclusively to increase participation in the Community Work Experience Program. Highest priority for CWEP placements will be given to counties with unemployment statistics higher than the state average. This appropriation of one million two hundred thousand dollars will be matched by approximately two million five hundred thousand dollars in federal funds which will be used for the same purposes.”
**47—State Commission on Aging**

**Acct. No. 4060**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$279,721</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$146,542</td>
</tr>
<tr>
<td>Equipment</td>
<td>$554</td>
</tr>
<tr>
<td>Programs for Elderly</td>
<td>$2,866,614</td>
</tr>
<tr>
<td>Golden Mountaineer Program</td>
<td>$35,000</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$0</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$6,872,288</td>
</tr>
<tr>
<td>Senior Citizens Centers</td>
<td>$200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$7,299,105</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Senior Citizens Centers" at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84, with the purpose of such items to be redesignated: "Senior Citizens Centers—land acquisition, construction, repairs or alterations."

**48—State Health Department—Retardation Centers**

**Acct. No. 4150**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,569,136</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,490,071</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$195,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$69,700</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$10,323,907</td>
</tr>
</tbody>
</table>

The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3 and 4 above.
49—State Health Department—Mental Hospitals

*Acct. No. 4160

<table>
<thead>
<tr>
<th>Item</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$18,503,471</td>
<td>$17,772,599</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>5,984,063</td>
<td>5,569,828</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>276,220</td>
<td>241,220</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>247,240</td>
<td>208,005</td>
</tr>
<tr>
<td>5 Student Nurse Affiliation Program (Huntington)</td>
<td></td>
<td>71,782</td>
</tr>
<tr>
<td>6 Psychiatric Training Center—Student Nurses (Weston)</td>
<td></td>
<td>219,971</td>
</tr>
<tr>
<td>9 Total</td>
<td>$25,302,747</td>
<td>$24,083,405</td>
</tr>
</tbody>
</table>

The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3 and 4 above.

*Clerk's Note: Portions of Acct. No. 4160 were reduced by the Governor as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$18,503,471</td>
<td>$17,772,599</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>5,984,063</td>
<td>5,569,828</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>276,220</td>
<td>241,220</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>247,240</td>
<td>208,005</td>
</tr>
<tr>
<td>5 Student Nurse Affiliation Program (Huntington)</td>
<td></td>
<td>71,782</td>
</tr>
<tr>
<td>6 Psychiatric Training Center—Student Nurses (Weston)</td>
<td></td>
<td>219,971</td>
</tr>
<tr>
<td>9 Total</td>
<td>$25,302,747</td>
<td>$24,083,405</td>
</tr>
</tbody>
</table>

In mandamus proceedings numbered 15863, 15864 and 15865, the Clerk of the House of Delegates was commanded and directed to publish Acct. No. 4160 as passed by the Legislature, as set out above.
Ch. 29] APPROPRIATIONS 137

50—State Health Department—Public Hospitals

Acct. No. 4170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$11,619,287</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,030,393</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$191,930</td>
</tr>
<tr>
<td>Equipment</td>
<td>$68,653</td>
</tr>
<tr>
<td>Total</td>
<td>$15,910,263</td>
</tr>
</tbody>
</table>

The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3 and 4 above.

51—State Board of Education—Rehabilitation Division

Acct. No. 4400

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,642,896</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,220,523</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$129,836</td>
</tr>
<tr>
<td>Equipment</td>
<td>$186,565</td>
</tr>
<tr>
<td>Case Services</td>
<td>$9,196,404</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$425,128</td>
</tr>
<tr>
<td>WVU—Reimbursement</td>
<td>$594,000</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>$527,000</td>
</tr>
<tr>
<td>Blind Services Coordinating Unit</td>
<td>$37,000</td>
</tr>
<tr>
<td>Total</td>
<td>$24,922,352</td>
</tr>
</tbody>
</table>

52—Commission for the Blind

Acct. No. 4450

<table>
<thead>
<tr>
<th>Item</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$—</td>
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</tbody>
</table>

BUSINESS AND INDUSTRIAL RELATIONS

53—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>
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</table>

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$968,590</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Miner Training Education and Certification</td>
</tr>
<tr>
<td>5</td>
<td>Board of Coal Mine Health and Safety</td>
</tr>
<tr>
<td>6</td>
<td>Gas Well Certification</td>
</tr>
<tr>
<td>7</td>
<td>Development of Mine Safety Program</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
</tr>
</tbody>
</table>

### Department of Mines

#### Acct. No. 4600

<table>
<thead>
<tr>
<th>Item</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Labor Management Advisory Council</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

54—**Department of Mines**

#### Acct. No. 4730

1  | West Virginia's contribution to Potomac River Basin | $ -  | $ 30,350 |

55—**Interstate Commission on Potomac River Basin**

#### Acct. No. 4740

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

56—**Ohio River Valley Water Sanitation Commission**

#### Acct. No. 4760

<table>
<thead>
<tr>
<th>Item</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
</tr>
</tbody>
</table>

57—**West Virginia Air Pollution Control Commission**
58—State Athletic Commission
Acct. No. 4790

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>Total</td>
<td>$5,500</td>
</tr>
</tbody>
</table>

59—West Virginia State Aeronautics Commission
Acct. No. 4850

Any unexpended balance remaining in the appropriation "Airport Matching" at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during fiscal year 1983-84.

60—West Virginia Nonintoxicating Beer Commissioner
*Acct. No. 4900

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$305,777</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$86,217</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$300</td>
<td></td>
</tr>
<tr>
<td>4 Total</td>
<td>$392,294</td>
<td></td>
</tr>
</tbody>
</table>

61—West Virginia Racing Commission
Acct. No. 4950

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$842,148</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$85,716</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td>4 Total</td>
<td>$932,864</td>
<td></td>
</tr>
</tbody>
</table>

AGRICULTURE

62—Department of Agriculture
Acct. No. 5100

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$39,000</td>
<td></td>
</tr>
</tbody>
</table>

*Clerk's Note: All of Acct. No. 4900 was reduced by the Governor and line three thereof was completely deleted as follows:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$305,777</td>
<td>$28,125</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$86,217</td>
<td>50,000</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$300</td>
<td>0</td>
</tr>
<tr>
<td>4 Total</td>
<td>$392,294</td>
<td>78,125</td>
</tr>
</tbody>
</table>

In a mandamus proceeding numbered 15907, the Clerk of the House of Delegates was instructed to publish Acct. No. 4900 as enacted by the Legislature, as set out above.
2 Other Personal Services .............. 212,280 1,882,367
3 Current Expenses ...................... 127,906 990,665
4 Equipment ................................ — 32,250
5 Multiflora Rose Eradication Program — 165,000
6 Gypsy Moth Program ................... — 300,000

8 Total .................................. $ 340,186 $ 3,409,282

9 Out of the above General Revenue Funds a sum may be used to match Federal Funds for the eradication and control of pest and plant disease.

63—Farm Management Commission

Acct. No. 5110

6 Total .................................. $ — $ 2,599,231

64—Department of Agriculture—

Soil Conservation Committee

Acct. No. 5120

4 Total .................................. $ — $ 682,930

5 Any unexpended balance remaining in the appropriation for “Watershed Program” and “Mud River Flood Control Project,” at the close of the fiscal year 1982-83 is hereby re-appropriated for expenditure during the fiscal year 1983-84.
65—Department of Agriculture—Division of Rural Resources
(Matching Fund)

Acct. No. 5130

<table>
<thead>
<tr>
<th></th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>733,980</td>
<td>367,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>191,043</td>
<td>154,547</td>
</tr>
<tr>
<td>Equipment</td>
<td>41,200</td>
<td>78,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>966,223</strong></td>
<td><strong>521,547</strong></td>
</tr>
</tbody>
</table>

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.

66—Department of Agriculture—Meat Inspection

Acct. No. 5140

<table>
<thead>
<tr>
<th></th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>372,136</td>
<td>367,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>255,036</td>
<td>154,547</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>627,172</strong></td>
<td><strong>521,547</strong></td>
</tr>
</tbody>
</table>

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

67—Department of Agriculture—Agricultural Awards

*Acct. No. 5150

<table>
<thead>
<tr>
<th></th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture Awards</td>
<td>36,800</td>
<td>36,800</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>78,200</td>
<td>78,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>115,000</strong></td>
<td><strong>115,000</strong></td>
</tr>
</tbody>
</table>

*Clerk's Note: Acct. No. 5150 was reduced by the Governor as follows:

<table>
<thead>
<tr>
<th></th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture Awards</td>
<td>52,500</td>
<td>36,800</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>111,338</td>
<td>78,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>163,838</strong></td>
<td><strong>115,000</strong></td>
</tr>
</tbody>
</table>
CONSERVATION AND DEVELOPMENT

68—Geological and Economic Survey

*Acct. No. 5200

<table>
<thead>
<tr>
<th>Item</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$55,464</td>
<td>$1,247,699</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>38,486</td>
<td>302,464</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>—</td>
<td>33,488</td>
</tr>
<tr>
<td>Equipment</td>
<td>6,500</td>
<td>37,658</td>
</tr>
<tr>
<td>Special Studies</td>
<td>—</td>
<td>60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$100,450</strong></td>
<td><strong>$1,681,309</strong></td>
</tr>
</tbody>
</table>

69—Department of Natural Resources

Acct. No. 5650

<table>
<thead>
<tr>
<th>Item</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$5,286,602</td>
<td>$8,747,539</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>7,284,709</td>
<td>3,030,574</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>20,221,730</td>
<td>552,811</td>
</tr>
<tr>
<td>Equipment</td>
<td>562,195</td>
<td>346,276</td>
</tr>
<tr>
<td>Fire Prevention Control</td>
<td>—</td>
<td>651,533</td>
</tr>
<tr>
<td>Personal Services</td>
<td>589,143</td>
<td></td>
</tr>
<tr>
<td>Other Expenses</td>
<td>62,390</td>
<td></td>
</tr>
<tr>
<td><strong>Water Resources Board and</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Reclamation Board of Review</strong></td>
<td>—</td>
<td>108,650</td>
</tr>
<tr>
<td><strong>Debt Service</strong></td>
<td>—</td>
<td>1,137,350</td>
</tr>
<tr>
<td><strong>To Local Entities</strong></td>
<td>29,800</td>
<td></td>
</tr>
</tbody>
</table>

*Clerk's Note: The Governor reduced portions of Acct. No. 5200 as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$55,464</td>
<td>$1,430,749</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>38,486</td>
<td>325,164</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>—</td>
<td>33,488</td>
</tr>
<tr>
<td>Equipment</td>
<td>6,500</td>
<td>141,908</td>
</tr>
<tr>
<td>Special Studies</td>
<td>—</td>
<td>60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$100,450</strong></td>
<td><strong>$1,991,309</strong></td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Chief Logan State Park</td>
<td></td>
<td>200,000</td>
</tr>
<tr>
<td>13</td>
<td>*Total</td>
<td>$33,385,036</td>
<td>$14,774,733</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Reeds Creek Hatchery” and “Castleman’s Run Lake” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

Any or all funds appropriated for “Fire Prevention Control” may be transferred to Special Revenue Fund to match and aid Federal Funds.

### 70—Public Land Corporation

Acct. No. 5660

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any unexpended balance remaining in the appropriations for “Public Land Corporation” and “Blennerhassett Island” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 71—Water Development Authority

Acct. No. 5670

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Loan and Grant Program</td>
<td></td>
<td>$ 397,000</td>
</tr>
<tr>
<td>2</td>
<td>**Capital Outlay—Sewer</td>
<td></td>
<td>8,500,000</td>
</tr>
<tr>
<td>3</td>
<td>**Capital Outlay—Water</td>
<td></td>
<td>168,000</td>
</tr>
<tr>
<td>4</td>
<td>**Total</td>
<td></td>
<td>$ 9,065,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Capital Outlay,” “Phase III Hardship Grants,” “Lubeck

---

*Clerk’s Note: The Governor deleted lines ten and eleven. Acct. No. 5650, prior to their deletion they were as follows:

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Wells Lock and Dam</td>
<td></td>
<td>500,000</td>
</tr>
<tr>
<td>11</td>
<td>Canaan Valley State Park</td>
<td></td>
<td>150,000</td>
</tr>
</tbody>
</table>

The Governor also reduced the total on line thirteen from “$15,424,733” to “$14,774,733” to reflect deletions.

**Clerk’s Note: The Governor reduced line two, Acct. No. 5670, from “$9,647,894” to “$8,500,000” and line three from “$685,500” to “$168,000”. The total on line four was also reduced from “$10,730,394” to “$9,065,000” to reflect the reductions.
Public Service District,” “Bolair Public Service District” and “McMechen Water Project” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

### 72—West Virginia Railroad Maintenance Authority

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Baltimore and Ohio—</th>
<th>Passenger Service</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5690</td>
<td>$673,131</td>
<td>$136,500</td>
<td>$106,500</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$809,631</td>
</tr>
</tbody>
</table>

### PROTECTION

#### 73—Department of Public Safety

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Emergency Fund</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5700</td>
<td>$12,684</td>
<td>$6,752,161</td>
<td>$268,400</td>
<td>$2,097,033</td>
<td>$10,000</td>
<td>$23,218,537</td>
</tr>
</tbody>
</table>

### 74—Adjutant General—State Militia

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</th>
<th>Property Maintenance</th>
<th>State Armory Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>5800</td>
<td>$157,482</td>
<td>$279,775</td>
<td>$105,700</td>
<td>$0.00</td>
<td>123,035</td>
<td>$1,025,950</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>
10 College Education Fund — $ 200,000

11 Total $ 542,957 $ 4,884,867

MISCELLANEOUS BOARDS AND COMMISSIONS

75—West Virginia Civil Service System

Acct. No. 5840

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 833,167</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$ 235,470</td>
</tr>
<tr>
<td>Equipment</td>
<td>$ 4,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 1,072,637</td>
</tr>
</tbody>
</table>

The director shall maintain accurate records reflecting the cost of administering the provisions of this appropriation. At the close of each quarter-year period, the director 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.

76—West Virginia Public Legal Services Council

Acct. No. 5900

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council and Central Office</td>
<td>$ 179,888</td>
</tr>
<tr>
<td>Appointed Counsel Fees</td>
<td>$ 3,082,218</td>
</tr>
<tr>
<td>Public Defender Operations</td>
<td>$ 352,300</td>
</tr>
<tr>
<td>Criminal Law Research Center</td>
<td>$ 125,717</td>
</tr>
<tr>
<td>Appellate Division</td>
<td>$ 125,717</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,740,123</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

### 77—Human Rights Commission

Acct. No. 5980

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$172,302</td>
<td>$325,951</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$64,404</td>
<td>$142,515</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
<td>$4,882</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$236,706</td>
<td>$473,348</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 78—Women’s Commission

Acct. No. 6000

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td></td>
<td></td>
<td>$32,846</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
<td></td>
<td>$15,309</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$48,155</td>
<td></td>
</tr>
</tbody>
</table>

### 79—West Virginia Public Employees Retirement Board

Acct. No. 6140

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers Accumulation Fund</td>
<td>$ —</td>
<td>$12,226,000</td>
<td></td>
<td></td>
<td>$13,846,000</td>
</tr>
<tr>
<td>Expense Fund</td>
<td></td>
<td></td>
<td>70,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supplemental Benefits for Annuitants</td>
<td></td>
<td>1,550,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state's share of West Virginia Public Employees Retirement coverage for those departments operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workers' 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 Chapter 115, Acts of the Legislature, Regular Session, 1982.

### 80—West Virginia Public Employees Insurance Board

#### Acct. No. 6150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expense Fund (Supply)</td>
<td>$311,322</td>
</tr>
<tr>
<td>Public Employees Health Insurance—State Contributions</td>
<td>$81,188,678</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$81,500,000</strong></td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state's share of Public Employees Health Insurance costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Worker'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.

### 81—Insurance Commissioner

#### Acct. No. 6160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$611,155</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$201,114</td>
</tr>
<tr>
<td>Equipment</td>
<td>$17,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$829,769</strong></td>
</tr>
</tbody>
</table>

### 82—State Fire Commission

#### Acct. No. 6170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$555,500</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$229,225</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$3,048</td>
</tr>
</tbody>
</table>
Sec. 3. 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-four.

Sec. 4. Appropriations of federal funds.—In accordance with Chapter 4, Article 11, Federal Funds are 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-four.

83—State Department of Highways

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Federal Revenue Fiscal Year 1983-84</th>
<th>Other Revenue Fiscal Year 1983-84</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway,</td>
<td></td>
<td>$ 46,850,000</td>
</tr>
<tr>
<td>Trunkline and Feeder</td>
<td>$ —</td>
<td></td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td></td>
<td>60,547,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>—</td>
<td>23,000,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>—</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>—</td>
<td>3,950,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>—</td>
<td>16,400,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>—</td>
<td>87,187,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>—</td>
<td>167,700,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>—</td>
<td>94,100,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>—</td>
<td>24,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>—</td>
<td>9,446,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ —</td>
<td>$534,680,000</td>
</tr>
</tbody>
</table>
The above appropriation line items are to be expended in accordance with the provisions of Chapter 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.

84—Department of Motor Vehicles

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,150,838</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,502,829</td>
</tr>
<tr>
<td>Equipment</td>
<td>$41,000</td>
</tr>
<tr>
<td>Purchase of License Plates</td>
<td>$582,550</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$144,107</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$204,330</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$286,980</td>
</tr>
<tr>
<td>Total</td>
<td>$6,912,634</td>
</tr>
</tbody>
</table>

85—Department of Education—Veterans Education

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$60,430</td>
</tr>
</tbody>
</table>
2 Other Expenses .......................... 28,474 

3 Total .................................. $ 88,904 $ 

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

6 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.

86—Treasurer's Office—Abandoned and Unclaimed Property

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ...................... $ — $ 52,112

2 Other Expenses ....................... — 46,471

3 Total .................................. $ — $ 98,583

87—Real Estate Commission

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ...................... $ — $ 113,592

2 Current Expenses ................... — 92,846

3 Equipment ................................ — 7,000

4 Total .................................. $ — $ 213,438

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

88—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
3 Special Revenue Fund out of collections of license fees and fines as provided by law.

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

89—Auditor’s Office—Land Department Operating Fund

Acct. No. 8120

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>

2 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.

90—Department of Finance and Administration—Division of Purchasing—Revolving Fund

Acct. No. 8140

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>Current Expenses</td>
</tr>
<tr>
<td>Equipment</td>
</tr>
<tr>
<td>Social Security Matching</td>
</tr>
<tr>
<td>Public Employee</td>
</tr>
<tr>
<td>Retirement Matching</td>
</tr>
<tr>
<td>Public Employees Health</td>
</tr>
<tr>
<td>Insurance</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

10 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.

12 The above appropriation includes salaries and operating expenses.

15 There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.
### 91—Department of Finance and Administration—Information Systems Service Division Fund

Acct. No. 8151

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,609,691</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,556,477</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$189,184</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$174,850</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$247,921</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$167,784</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,945,907</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 Finance and Administration as provided by law.

### 92—Department of Agriculture

Acct. No. 8180

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$383,724</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$20,375</td>
</tr>
<tr>
<td>3 Social Security Matching</td>
<td>$25,709</td>
</tr>
<tr>
<td>4 Public Employees Retirement Matching</td>
<td>$36,000</td>
</tr>
<tr>
<td>5 Public Employees Health Insurance</td>
<td>$22,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$487,808</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.
93—General John McCausland Memorial Farm

Acct. No. 8194

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
</tbody>
</table>

94—State Committee of Barbers and Beauticians

Acct. No. 8220

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

95—Consumer Advocate

Acct. No. 8270

<table>
<thead>
<tr>
<th>TO BE PAID FROM SPECIAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
</tbody>
</table>
11 Special Revenue Fund out of collections made by the Public
12 Service Commission.

96—Public Service Commission

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$48,000</td>
<td>$2,992,950</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$21,376</td>
<td>$1,227,435</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td></td>
<td>119,600</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td></td>
<td>201,672</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement</td>
<td></td>
<td>284,415</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health</td>
<td></td>
<td>272,516</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

97—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$25,000</td>
<td>$144,297</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$15,450</td>
<td>$65,960</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td></td>
<td>1,500</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td></td>
<td>10,519</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement</td>
<td></td>
<td>14,914</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health</td>
<td></td>
<td>8,915</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.

98—Public Service Commission—Motor Carrier Division

Acct. No. 8290

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>$943,874</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$351,900</td>
</tr>
<tr>
<td>3. Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>4. Social Security Matching</td>
<td>$64,900</td>
</tr>
<tr>
<td>5. Public Employees Retirement</td>
<td></td>
</tr>
<tr>
<td>6. Matching</td>
<td>$89,700</td>
</tr>
<tr>
<td>7. Public Employees Health</td>
<td>$78,600</td>
</tr>
<tr>
<td>8. Insurance</td>
<td></td>
</tr>
</tbody>
</table>

Total $1,533,974

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.

99—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>$3,346,622</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$2,649,490</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$264,462</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$526,061</td>
</tr>
<tr>
<td>5. Land Purchase and Buildings</td>
<td>$688,000</td>
</tr>
<tr>
<td>6. Black Fly Program</td>
<td>$40,000</td>
</tr>
</tbody>
</table>

Total $7,514,635

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 1982-83
and available for capital improvement and land purchase pur-
poses are hereby reappropriated for expenditure in fiscal year
1983-84, all in accordance with Chapter 20, Article 2, Section
34, Code of West Virginia.

100—Geological and Economic Survey

Acct. No. 8340

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified ........................................... $ 40,000

2 The above appropriation shall be expended in accordance
with Enrolled Senate Bill No. 28, Acts, Legislature, Regular
Session, 1983.

101—Department of Public Safety—Inspection Fees

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ....................... $ — $ 430,522
2 Current Expenses ...................... — $ 220,664
3 Repairs and Alterations .............. — $ 8,700
4 Equipment ............................... — $ 21,000

5 Total ........................................... $ — $ 680,886

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

102—Department of Banking

Acct. No. 8392

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ....................... $ — $ 571,754
2 Current Expenses ...................... — $ 554,521
103—Crime Victim Reparation

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of Claims—Administrative</td>
<td></td>
</tr>
<tr>
<td>Costs—Total</td>
<td>$156,576</td>
</tr>
</tbody>
</table>

104—Department of Public Safety

Drunk Driving Prevention Fund

Acct. No. 8420

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

105—State Health Department—Hospital Services

Revenue Account (Special Fund)

(Capital Improvement, Renovation and Operation)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$94,640</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Funds out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and paid into a revolving fund account in the state treasury.

Any unexpended balances remaining in prior years and 1982-83 appropriations are hereby reappropriated for expenditure during fiscal year 1983-84.
106—State Health Department
Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified ........................................ $ 500,000

The above appropriation item is to be expended in accordance with and pursuant to the provisions of Enrolled S. B. 320, Acts, Legislature, Regular Session, 1983, and from the special revolving fund designated “Health Care Cost Review Fund.”

107—Board of Regents—West Virginia University
Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service .................................. $ — $ 543,000

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

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

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service .................................. $ — $ 2,371,000
2 Capital Building Repairs and Alterations .... $ 4,000,000
3 (Supplements Operating Budget at Colleges and Universities)
4 Miscellaneous Campus
5 Development Projects .................. — $ 1,300,000
6 Fairmont State College
7 Campus Development
8 (Building Renewal/Renovation) .. — $ 2,000,000
9 West Liberty State College Campus
10 Development
11 (Building Renewal/Renovation) — $ 100,000
12 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.

Any unexpended balances remaining in prior years and 1982-83 appropriations are hereby reappropriated for expenditure during fiscal year 1983-84.

109—Board of Regents—Special Capital Improvement Fund
Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service $ 1,670,000
2 The total amount of this appropriation shall be paid from the nonrevolving Capital Improvement Fund created by the 1959 Legislature, as amended.

110—Board of Regents—State System Registration Fee Revenue Bond Construction Fund
Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

Any unexpended balances remaining in prior years and 1982-83 appropriations are hereby reappropriated for expenditure during fiscal year 1983-84.

111—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 $ 9,829,000
2 WV Network for Educational Telecomputing (Computer System Upgrade and Acquisitions) — 1,700,000
3 Marshall University Campus
4 Development (Building Equipment, Science Hall Renovations, *Land Acquisitions) — 1,700,000

*Clark’s Note: Line eight, Acct. No. 8855, was reduced by the Governor from "$3,700,000" to "$1,700,000" and the reference in the line to the "Purchase of Keith-Albee Theatre" was deleted.
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>West Virginia University Campus Development</td>
</tr>
<tr>
<td>10</td>
<td>West Virginia University Hospital, Demolish Old Mountaineer Field, Building Renewal/Renovation</td>
</tr>
<tr>
<td>11</td>
<td>Bluefield State College Campus Development</td>
</tr>
<tr>
<td>12</td>
<td>(Building Renewal/Renovation)</td>
</tr>
<tr>
<td>13</td>
<td>Concord College Campus Development</td>
</tr>
<tr>
<td>14</td>
<td>(Building Renewal/Renovation)</td>
</tr>
<tr>
<td>15</td>
<td>Glenville State College Campus Development</td>
</tr>
<tr>
<td>16</td>
<td>(Gas Well Drilling, Building Renewal/Renovation)</td>
</tr>
<tr>
<td>17</td>
<td>WV Institute of Technology Campus Development</td>
</tr>
<tr>
<td>18</td>
<td>(Building Renewal/Renovation)</td>
</tr>
<tr>
<td>19</td>
<td>West Virginia State College Campus Development</td>
</tr>
<tr>
<td>20</td>
<td>(Building and Grounds Renewal/Renovation)</td>
</tr>
<tr>
<td>21</td>
<td>Parkersburg Community College Campus Development</td>
</tr>
<tr>
<td>22</td>
<td>(Equipment for Jackson County Center)</td>
</tr>
<tr>
<td>23</td>
<td>Potomac State College Campus Development</td>
</tr>
<tr>
<td>24</td>
<td>(Building Renewal/Renovation)</td>
</tr>
<tr>
<td>25</td>
<td>West Virginia University Engineering Science Building—Phase I)</td>
</tr>
<tr>
<td>26</td>
<td>Potomac State College (Science Building)</td>
</tr>
<tr>
<td>27</td>
<td>Marshall University Smith Hall Elevator</td>
</tr>
<tr>
<td>28</td>
<td>Fairmont State College Maintenance Building</td>
</tr>
<tr>
<td>29</td>
<td>Shepherd College McMuren-Reynolds Hall</td>
</tr>
</tbody>
</table>
Southern West Virginia Community College Campus Development (Acquisition and Renovation of Boone County Center) — 400,000

West Virginia Northern Community College (College Square and New Martinsville) — 600,000

West Virginia University Hospital and Medical Center (Fire and Life Safety Improvements) — 3,000,000

*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 1982-83 appropriations are hereby reappropriated for expenditure in fiscal year 1983-84.

112—Workers' Compensation Commissioner
Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION 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>$4,754,069</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,023,027</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$158,850</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$318,523</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Matching</td>
<td>$451,638</td>
</tr>
</tbody>
</table>

*Clerk's Note: All of lines fifty-three through fifty-six, Acct. No. 8855, were deleted by the Governor. Prior to their deletion, they read as follows:

"53 Southern West Virginia Community College Campus Development
55 Acquisition and Renovation of Pineville Center — 1,500,000"
7 Public Employees Health Insurance
8 Employees Excess Liability Fund

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>111,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>350,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>50,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>7,500</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>10,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>15,000</td>
</tr>
</tbody>
</table>

9 Total $10,733,611

10 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.

113—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,385,324</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$6,126,303</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$66,508</td>
</tr>
<tr>
<td>Equipment</td>
<td>$171,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$567,094</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$804,400</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$1,097,923</td>
</tr>
</tbody>
</table>

10 Total $17,218,552

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

13 The above appropriations include the salary of the commissioner, salaries of store personnel, store inspectors, store
15 operating expenses and equipment; and salaries, expenses and
16 equipment of administration offices.
17 There is hereby appropriated from liquor revenues, in addi-
18 tion to the appropriation, the necessary amount for the pur-
19 chase of liquor as provided by law.

114—*West Virginia University—Medical Center*

**Acct. No. 9280**

**TO BE PAID FROM MEDICAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$24,467,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$33,500,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,700,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,400,000</td>
</tr>
<tr>
<td>Intern and Residency Support</td>
<td></td>
</tr>
<tr>
<td>Program for Community</td>
<td></td>
</tr>
<tr>
<td>Hospitals</td>
<td>$945,000</td>
</tr>
<tr>
<td>Family Practice Residency</td>
<td></td>
</tr>
<tr>
<td>Support Program</td>
<td>$828,000</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$86,340,000</td>
</tr>
</tbody>
</table>

12 Any unexpended balance remaining in the appropriation
13 for "Capital Outlay" at the close of the fiscal year 1982-83 is
14 hereby reappropriated for expenditure during the fiscal year
15 1983-84.

115—*Board of Regents—West Virginia University*

**Medical Center Revenue Fund**

**Acct. No. 9285**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia University Hospital—Fire and Life Safety Requirements, HVAC and Mechanical/Electrical Upgrade, and Program</td>
<td>$26,250,000</td>
</tr>
</tbody>
</table>

1 Sec. 5. **Awards for claims against the state.**—There are 2 hereby appropriated, for the remainder of the fiscal year 3 1982-83 and to remain in effect until June 30, 1984, from the
funds as designated, in the amounts as specified, and for the
claimants as named in Enrolled House Bill Nos. 1271, 1272
and 1985, Acts, Legislature, Regular Session, 1983, total gen-
eral revenue funds of $716,723; state road funds of $654,029;
special revenue funds of $29,182; workers' compensa-
tion funds of $6,829; and crime reparations funds of $78,192
for payment of claims against the state. The total of general
revenue funds above, does not include payment from the Su-
preme Court—General Judicial, Account No. 1110, specifi-
cally made payable from the appropriation for the current
fiscal year 1982-83.

Sec. 6. Supplemental and deficiency appropriations.—
From the state fund, General Revenue and other designated
fund, except as otherwise provided, there are hereby appro-
priated 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-three, to supple-
ment the 1982-83 appropriations and to be available for ex-
penditure upon date of passage.

116—Governor's Office—Civil Contingent Fund
Acct. No. 1240

1 Buffalo Creek and Gilbert Creek ....................... $ 4,341,790

Funds appropriated in the above line item may be trans-
ferred to a special account, so that these funds plus interest
earned may be available for payment of the judgment plus
post-judgment interest awarded by the court in the case of
United States of America vs. State of West Virginia, Civil
Action No. 78-2049, (S.D. W.Va.), pursuant to guidelines
set forth in Executive Message No. 5 of March 10, 1983.

Any unexpended balance remaining in this appropriation
at the close of the fiscal year 1982-83 is hereby reappropriated
for expenditure during the fiscal year 1983-84.

117—West Virginia Board of Regents (Control)
Acct. No. 2790

1 Personal Services ....................................... $ 375,000
118—Adjutant General—State Militia
Acct. No. 5800

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>College Education Fund</td>
<td>$35,000</td>
</tr>
</tbody>
</table>

119—West Virginia Public Employees Insurance Board
Acct. No. 6150

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Employees Health Insurance—</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>State Contributions</td>
<td>$5,500,000</td>
</tr>
</tbody>
</table>

120—Crime Victim Reparation
Acct. No. 8412

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>Administrative Costs—Attorney General</td>
<td>$87,000</td>
</tr>
</tbody>
</table>

Sec. 7. Reappropriations.—Any unexpended balance of Item V in the appropriation 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 1983-84 with the exception of the following accounts: Item V, Account No. 4191-16 and Item IX, Account No. 4102-15.

Any unexpended balance of Item XV in the appropriation 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 1983-84 with exception of the following accounts: Item XIII, Account No. 4311-17.

Any unexpended balances of Item IX, 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 1983-84.

Sec. 8. Appropriations from federal block grants.—The following items are hereby appropriated from Federal Block Grants and are to be available for expenditure during the fiscal year 1983-84.
### 121—Department of Human Services—Energy Assistance

**Acct. No. 9150**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$350,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$13,362,149</td>
</tr>
<tr>
<td>3 Transfer to State Spending Units</td>
<td>$2,400,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$16,112,149</strong></td>
</tr>
</tbody>
</table>

### 122—Department of Human Services—Social Services

**Acct. No. 9151**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$6,376,207</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$14,761,802</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,138,009</strong></td>
</tr>
</tbody>
</table>

### 123—State Department of Education—Education Grant

**Acct. No. 8240**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$654,850</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$355,977</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$100</td>
</tr>
<tr>
<td>4 To Local Entities</td>
<td>$34,923,915</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$35,934,842</strong></td>
</tr>
</tbody>
</table>

### 124—Office of Economic and Community Development—Community Development

**Acct. No. 8034**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$110,206</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$206,180</td>
</tr>
</tbody>
</table>
### Ch. 29] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Equipment</td>
<td>1,699</td>
</tr>
<tr>
<td>4</td>
<td>To Local Entities</td>
<td>18,339,720</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$18,657,805</td>
</tr>
</tbody>
</table>

125—Office of Economic and Community Development Community Service

Acct. No. 8028
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$81,630</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>3,589,800</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>2,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$3,673,430</td>
</tr>
</tbody>
</table>

126—State Health Department—Primary Care

Acct. No. 8218
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To Local Entities—Total</td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

127—State Health Department—Maternal and Child Health

Acct. No. 8217
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$214,548</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>4,383,831</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$4,598,379</td>
</tr>
</tbody>
</table>

128—State Health Department—Alcohol, Drug Abuse and Mental Health

Acct. No. 8216
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$170,802</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>3,491,198</td>
</tr>
</tbody>
</table>
### Equipment Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Equipment</td>
<td>9,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,671,000</strong></td>
</tr>
</tbody>
</table>

---

#### State Health Department—Preventive Health

**Acct. No. 8219**

**TO BE PAID FROM FEDERAL FUNDS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$198,180</td>
</tr>
<tr>
<td>2 Current Expensees</td>
<td>$602,540</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>2,855</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$803,575</strong></td>
</tr>
</tbody>
</table>

---

**Sec. 9. Appropriations from Surplus Revenue.**—The following item is hereby appropriated from the state fund, general revenue, and is to be available for expenditure during the fiscal year 1983-84 out of surplus funds only, subject to the terms and conditions set forth in this section.

It is the intent and mandate of this Legislature that the following appropriation made by this section shall be payable only from the surplus accrued as of June 30, 1983.

In the event that the surplus revenues as of June 30, 1983 are not sufficient to meet all of the appropriation made by this section, then the appropriation shall be available, only to the extent of the total actual surplus accrued as of June 30, 1983.

---

#### West Virginia Public Employees Insurance Board

**Acct. No. 6150**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Public Employees Health Insurance—</td>
<td>$13,000,000</td>
</tr>
</tbody>
</table>

---

**Sec. 10. Supplemental and Deficiency Appropriations from Revenue Sharing Trust Fund.**—The following item is hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure from date of passage.
Appropriations

131—Revenue Sharing Trust Fund
State Tax Department

Acct. No. 9750

Property Reappraisal Program $2,473,311

The above appropriation is to be expended by the tax commissioner pursuant to general law and Article X, Section 1b of the Constitution of West Virginia for the conduct of the first statewide reappraisal of property subject to ad valorem taxation, as required by such constitutional amendment.

Sec. 11. Reappropriations—Revenue Sharing Trust Fund.

Sec. 12. Appropriations from countercyclical fiscal assistance trust fund.—Moneys received by the State of West Virginia pursuant to the provisions of the “Public Works Employment Act of 1976; Title II of Public Law 94-369,” as amended by the “Intergovernmental Antirecession Assistance Act of 1977; Public Law 95-30,” enacted by the Congress of the United States, shall be deposited in the state treasury and kept in a separate account entitled “Countercyclical Fiscal Assistance Trust Fund.”

Any part of or all such amounts as deposited, including deposits through fiscal year one thousand nine hundred eighty-four, 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. 13. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-four, 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, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, and Chapter 5A, Article 2 of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 14. 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-four, 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-four, 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. 15. 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. 16. Appropriations for refunding erroneous payment.
—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. 17. Municipal bond commission deficiencies.—There
is hereby appropriated to the Governor a sufficient amount
to meet any deficiencies that may arise in the mortgage finance
bond insurance fund of the West Virginia Housing Develop­
ment Fund which is under the supervision and control of the
West Virginia state municipal bond commission, formerly the
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 municipal bond commission because of the failure of any
state agency for either general obligations or revenue bonds
of 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 municipal bond
commission as may be necessary for these purposes.

The state municipal bond commission shall reimburse the
State of West Virginia through the Governor from the first
remittance collected from the West Virginia Housing Deve­
lopment Fund or from any state agency or local taxing dis­
trict 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. 18. Appropriations to pay costs of publication of de­
linquent corporations.—There is hereby appropriated out of
state fund, General Revenue, out of funds not otherwise ap-
propriated, 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 delinquent corporations as provided
by Chapter 11, Article 12, Sections 84 and 86 of the Code
of West Virginia.

Sec. 19. 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. 20. 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 I, Sec. 3.

Sec. 21. General school fund.—The balance of the pro-
cceeds of the general school fund remaining after the pay-
ment of the appropriations made by this act is appropriated
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 expenditure
of the appropriations made by this act, except those appro-
priations made to the legislative and judicial branches of the
state government are conditioned upon the compliance by
the spending unit with the requirements of Chapter 5A,
Article 2 of the Code of West Virginia.

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

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

CHAPTER 30

(Com. Sub. for S. B. 99—By Mr. Tucker, Mr. Colombo and Mrs. Spears)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, five and
six, article two-c, chapter nineteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend article two-c by adding thereto
five new sections, designated sections five-a, six-a, nine, ten
and eleven, relating to auctioneers; procedures and
requirements for license; examinations; providing fees and
bond amounts to be established; creating a special fees
account; providing for rules and regulations; procedures for
obtaining nonresident auctioneer's license; providing for
written contracts and exceptions; providing for advertising;
and making provisions for persons currently licensed.

Be it enacted by the Legislature of West Virginia:
That sections one, three, four, five and six, article two-c,
chapter nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted; and
that article two-c be further amended by adding thereto five new
sections, designated sections five-a, six-a, nine, ten and eleven to
read as follows:
ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

For the purpose of this article the following definitions shall prevail:

(a) The term “auctioneer” means and includes a person who sells goods or real estate at public auction for another on commission or for other compensation. The term “auctioneer” shall not include (1) persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction, (2) the owner of any real or personal property when personally sold at auction by such owner and such owner has not personally conducted an auction within the previous twelve-month period, (3) persons conducting sales pursuant to a deed of trust or other security agreement, (4) fiduciaries of estates when selling real or personal property of such estate, and (5) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations: Provided, That nothing contained in this article shall exempt persons conducting sales at public markets from the provisions of article two-a, chapter nineteen where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

(b) The term “public auction” means any public sale of real or personal property when offers or bids are made by prospective purchasers and the property sold to the highest bidder.
The term "commissioner" means the commissioner of agriculture of West Virginia.

§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.

Any person who wishes to conduct an auction as an auctioneer may apply therefor on forms prescribed by the commissioner and containing such information as the commissioner may by rule or regulation require. A nonreturnable application fee of fifty dollars shall accompany each application as well as an annual license fee of fifty dollars. All such fees collected shall be paid into the general revenue fund in the state treasury.

In addition to the payment of fees, an applicant shall file with his application, a bond as required in section four of this article.

The commissioner shall, within thirty days after the receipt of an application, notify, by certified mail, the applicant of his eligibility to be tested at the next regularly scheduled test, as well as the date of such test.

In the event the license is denied, the applicant shall be refunded any annual license fee submitted with the application.

Licenses issued shall expire on the thirtieth day of June of each year but shall be renewable upon the payment of the annual license fee so long as other requirements of this article are complied with.

The state department of agriculture shall be deemed to be agent for the purpose of service of process on any licensed auctioneer for any action occasioned by the performance of the duties of such auctioneer. Every licensed auctioneer, by virtue of his application for license, shall be deemed to have consented to such statutory agency.

§19-2C-4. Bond required.

Every person applying for a license as an auctioneer or continuing to act as a licensed auctioneer, shall file with the commissioner and maintain in full effect a property or corporate surety bond satisfactory to the commissioner and in form and amount as prescribed by the commissioner pursuant to the rules and regulations promulgated in
accordance with this article: Provided, That in no event shall the amount of such bond be less than ten thousand dollars. Such bond shall be conditioned upon the faithful compliance by the auctioneer with the provisions of this article and the payment of all required taxes, fees and penalties imposed by this state and its political subdivisions as well as the payment by any auctioneer of any final judgment obtained for damages arising out of his conduct or duties as an auctioneer. Such bond shall be open to public inspection.

§19-2C-5. Requirements for license; rules and regulations; duties of licensee; revocation or suspension of license.

(1) Each person seeking a license hereunder after the effective date of this section shall submit satisfactory evidence to the commissioner showing:

(a) That he has successfully completed the written and oral examinations provided for in this article;
(b) That he has a good reputation;
(c) That he is of trustworthy character;
(d) That he has met the apprenticeship requirements set forth in this article, if applicable;
(e) That he is a citizen of the United States; and
(f) That he has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(2) The commissioner shall promulgate such reasonable rules and regulations as he shall deem necessary to carry out the intent and the administration and enforcement of this article, which said rules and regulations shall be promulgated in accordance with the applicable provisions of chapter twenty-nine-a of this code as if the same were set forth herein in extenso.

(3) Each licensee shall promptly produce for inspection such license at all sales conducted by or participated in by such licensee when requested to do so by any person and shall keep complete and accurate records of all transactions engaged in for a period of six months which records shall be
open to inspection by the commissioner or his authorized representative.

(4) The commissioner may, by order, suspend or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued and flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within fifteen days of conviction;

(f) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

(g) Engaging in any other conduct that constitutes fraudulent or dishonest dealing; and

(h) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his license revoked shall not be issued another such license until a period of two years has elapsed from the date of revocation and then only upon successful completion of the examinations required for an auctioneer's license or an apprentice auctioneer's license.

§19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.

Examinations shall be held in April and October of each year, at a time and place to be designated by the commissioner or his authorized representative.
Any individual auctioneer applicant may take the examination for auctioneer and apprentice at the regularly scheduled time and place. The examination shall consist of a written and an oral portion. The apprentice will be excused from the oral portion of the examination. The passing grade shall be seventy out of one hundred. The oral portion will be scored by the commissioner or his authorized representative. If the applicant fails either the written or oral portion of the examination no license will be issued and he or she shall not be administered the examination again until the next regularly scheduled examination date.

One notice only of the examination shall be sent to the applicant by certified mail, return receipt requested. If the applicant fails to appear for such examination, except as provided herein, a new application and a new fee shall be required. No fee shall be returned except when the applicant fails to take the examination because of illness evidenced by a doctor's certificate sent to the commissioner by certified mail, return receipt requested. If excused because of illness the applicant shall be admitted to the next scheduled examination without additional fee. No applicant shall be excused from taking the scheduled examination for any reason other than illness unless in the judgment of the commissioner, the applicant would suffer undue hardship thereby.

A fee, of fifty dollars in addition to any other fees required by this article, shall be collected from each person taking such examination.

If the commissioner determines that an applicant does not qualify for a license, he shall so notify the applicant by certified mail. The notice shall state the reason for refusal to grant a license and the applicant's right of appeal.

An examination shall not be required for the renewal of any license unless such license has been revoked or suspended, in which case the applicant shall take and pass any written examination offered by the department.

§19-2C-6. Apprentice licenses; fees.

The department of agriculture may grant apprentice auctioneers' licenses to those persons deemed qualified by
the commissioner. Every applicant for an apprentice auctioneer's license must take and pass an examination relating to the skills and knowledge, and statutes and regulations governing auctioneers. Every applicant shall furnish to the commissioner on forms provided by the department, satisfactory proof of the following:

(a) That he has a good reputation;
(b) That he is a trustworthy character; and
(c) That he is a citizen of the United States.

Any apprentice auctioneer may take the examination to become an auctioneer after serving a two-year apprenticeship under a licensed auctioneer: PROVIDED, That if the apprentice has attended a nationally accredited graduate school of auctioneering, approved by the commissioner, he shall serve an apprenticeship of only six months. Before an apprentice may take the auctioneer's examination, the apprentice shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer.

When any apprentice is discharged or terminates his employment with an auctioneer for any reason, the auctioneer shall immediately deliver or mail, by certified mail, to the commissioner the license of such apprentice auctioneer. No apprentice auctioneer shall thereafter perform any acts under the authority of his license until such apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time. The fee for the transfer of the license of an apprentice auctioneer to a new employer auctioneer shall be fifteen dollars.

The amount of the apprentice auctioneer's annual renewal license shall be fifty dollars and bond requirements shall be established by reasonable rules and regulations promulgated by the commissioner, and both must be filed with the department of agriculture: PROVIDED, That the bond required by this section shall not be less than five thousand dollars. The department shall not issue an apprentice auctioneer's license until bond has been filed in accordance with this article. Such permits shall expire on
the thirtieth day of June of each year but shall be renewable upon the payment of the annual fee. An apprentice license shall entitle the holder thereof to assist in or conduct a public auction under the immediate supervision of a licensed auctioneer.

§19-2C-6a. Procedure for nonresident auctioneer’s license.

To qualify for a nonresident license by reciprocity the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he shall be licensed either as an apprentice or as an auctioneer, based on a nonresident license, as the case may be.

When an applicant's resident state has no licensing law for auctioneers or the applicant’s resident state has no written or oral examination associated with its licensing requirements the department of agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. Said proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant will be seated at the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

§19-2C-9. Written contracts; exception.

No person shall act as auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has, at the request of the owner or consignor, first entered into a written contract in duplicate with the owner or consignor of any property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. No apprentice auctioneer shall be authorized to enter such contract without the written consent of his or her employer auctioneer. All contracts
shall be in the name of and on behalf of the employing auctioneer.

In instances where contracts are used, the commissioner may require the following:

(a) That written contracts between the auctioneer and the seller be made in duplicate;

(b) That the original contract is to be retained by the auctioneer for a period of six months;

(c) That one copy of the contract is to be furnished to each person that entered into the contract;

(d) That an apprentice may not contract directly with a client, but only through the auctioneer under whom he is licensed;

(e) That an apprentice may not engage in a sale with an auctioneer under whom he is not licensed without first obtaining the written consent of the auctioneer under whom he is licensed; and

(f) That on all contracts between an auctioneer and a seller there shall be a prominent statement indicating that the auctioneer is licensed by the department of agriculture and bonded in favor of the state of West Virginia.

§19-2C-10. Advertising.

In advertising an auction sale by any licensed auctioneer or auction house the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his advertisement the name of the auctioneer under whom he or she is licensed.

The auctioneer's name shall be displayed in equal prominence with the name of the apprentice auctioneer in such advertisement.

Nothing in the provisions of this article, shall be construed so as to prohibit any other auctioneer, licensed
1 Any person who holds a valid auctioneer’s license as of the effective date of this section shall not be required to take the examinations required by this article.

CHAPTER 31
(H. B. 1688—By Mr. Gilliam)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of state banking institutions generally; limitations on loans and extensions of credit; limitations on investments; loans to officers and employees of banks and banking department; valuation of securities.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and twenty-six, article four, 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 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.
§31A-4-26. Limitation on loans and extensions of credit; limitation of investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.

§31A-4-13. Powers of state banking institutions generally.
1 Any state-chartered banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and, without limiting or restricting such general powers, it shall have the right to buy or discount promis-
sory notes and bonds, negotiate drafts, bills of exchange and
other evidences of indebtedness, borrow money, receive de-
posits on such terms and conditions as its officers may pre-
scribe, buy and sell exchange, bank notes, bullion or coin,
loan money on personal or other security, rent safe-deposit
boxes and receive on deposit, for safekeeping, jewelry, plate.
stocks, bonds and personal property of whatsoever description
and provide customer services incidental to the business of
banking, including, but not limited to, the insurance and ser-
vicing of and lending money by means of credit cards as letters
of credit or otherwise. Any state-chartered banking institution
may accept, for payment at a future date, not to exceed one
year, drafts drawn upon it by its customers. Any state-chartered
banking institution may issue letters of credit, with a specified
expiration date or for a definite term, authorizing the holders
thereof to draw drafts upon it or its correspondents, at sight or
on time, but no such letters of credit shall authorize the draw-
ing of drafts beyond one year. Any such banking institution
may organize, acquire, own, operate, dispose of, and otherwise
manage wholly owned subsidiary corporations for purposes
incident to the banking powers and services authorized by
this chapter.

Any such banking institution may acquire, own, hold, use
and dispose of, real estate, which shall in no case be carried
on its books at a value greater than the actual cost, subject to
the following limitations and for the following purposes:

(a) Such as shall be necessary for the convenient transaction
of its business, including in any buildings, office space or
other facilities to rent as a source of income; such investment
hereafter made shall not exceed sixty-five percent of the
amount of its capital stock and surplus, unless the consent in
writing of the commissioner of banking is first secured;

(b) Such as shall be mortgaged to it in good faith as security
for debts in its favor;

(c) Such as shall be conveyed to it in satisfaction of debts
previously contracted in the course of its business dealings;

(d) Such as it shall purchase at sales under judgments, de-
crees, trust deeds or mortgages in its favor, or shall purchase
at private sale, to secure and effectuate the payment of debts due to it; and

(e) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

Any real estate acquired by any such banking institution under subdivisions (c) and (d) shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses. In every case such property shall be disposed of within five years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

No such banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(2) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and fully secured by readily marketable collateral having
a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term “loans and extensions of credit” shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the commissioner of banking, such terms shall also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(B) The term “person” shall include an individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

(4) The limitations contained in this subsection shall be subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

(B) The purchase of bankers’ acceptances of the kind described in section thirteen of the federal reserve act and issued by other banks shall not be subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents
transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia shall not be subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the state of West Virginia or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the commissioner of banking, shall not be subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or un-
conditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent of such capital and surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection.

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a maximum limitation equal to twenty-five percent of such capital and surplus.

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection, to a limitation of twenty-five percent of such capital and surplus;

(J) Loans or extensions of credit to the student loan marketing association shall not be subject to any limitation based on capital and surplus;

(K) Loans or extensions of credit to a corporation own-
(5) (A) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection including rules or regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The commissioner of banking may also prescribe rules and regulations to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this act, but which will be in violation of this section upon the effective date of this act;

(C) The commissioner of banking also shall have authority to determine when a loan putatively made to a person shall for purposes of this subsection be attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: Provided, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) In no event shall the total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account, exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(3) For purposes of this subsection:

(A) The term “investment securities” shall include marketable obligations, evidencing indebtedness of any person in
the form of stocks, bonds, notes and/or debentures; "investment securities" may be further defined by regulation of the commissioner of banking; and

(B) The term "person" shall include any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

(4) The limitations contained in this subsection (b) shall be subject to the following exceptions:

(A) Obligations of the United States;

(B) General obligations of any state or of any political subdivision thereof;

(C) Obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks;

(D) Obligations which are insured by the secretary of housing and urban development under Title XI of the National Housing Act (12 USC §§1749aaa et seq.);

(E) Obligations which are insured by the secretary of housing and urban development hereafter in this sentence referred to as the "secretary" pursuant to section 207 of the National Housing Act (12 USC §1713), if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States;

(F) Obligations, participations or other instruments of or issued by the federal national mortgage association or the government national mortgage association, or mortgages, obligations or other securities which are or ever have been sold by the federal home loan mortgage corporation pursuant to Section 305 or Section 306 of the Federal Home Loan Mortgage Corporation Act (12 USC §1454 or §1455);
(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of the student loan marketing association;

(I) Obligations of the environmental financing authority;

(J) Such obligations of any local public agency (as defined in Section 110(h) of the Housing Act of 1949 (42 USC §1460 (h)) as are secured by an agreement between the local public agency and the secretary of housing and urban development in which the local public agency agrees to borrow from said secretary and said secretary agrees to lend to said local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which moneys under the terms of said agreement are required to be used for such payments;

(K) Obligations of a public housing agency as that term is defined in the United States Housing Act of 1937, as amended, (42 USC §§ 1401 et. seq.) as are secured.

(i) By an agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity;

(ii) By a pledge of annual contributions under an annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by subsection (b) of Section 22 (Section 6 (g) (42 USC §1421a(b)) of
the United States Housing Act of 1937, as amended, and if the
maximum sum and the maximum period specified in such
contract pursuant to said subsection 22(b) shall not be less
than the annual amount and the period for payment which are
requisite to provide for the payment when due of all install-
ments of principal and interest on such obligations; or

(iii) By a pledge of both annual contributions under an
annual contributions contract containing the covenant by the
secretary which is authorized by Section 6 (g) of the United
States Housing Act of 1937 (42 USC §1437d (g)) and a loan
under an agreement between the local public housing agency
and the secretary in which the public housing agency agrees to
borrow from the secretary, and the secretary agrees to lend to
the public housing agency, prior to the maturity of the obliga-
tions involved, moneys in an amount which, together with any
other moneys irrevocably committed under the annual contri-
butions contract to the payment of principal and interest on
such obligations will suffice to provide for the payment when
due of all installments of principal and interest on such ob-
ligations, which moneys under the terms of the agreement are
required to be used for the purpose of paying the principal
and interest on such obligations at their maturity;

(L) Obligations of a corporation owning the property in
which that state-chartered banking institution is located
when that state-chartered banking institution has an
unimpaired capital and surplus of not less than one million
dollars or when approved in writing by the commissioner of
banking;

(5) Notwithstanding any other provision in this sub-
section, a state-chartered banking institution may pur-
chase for its own account shares of stock issued by a
corporation authorized to be created pursuant to Title IX of
the Housing and Urban Development Act of 1968 (42 USC
§§3931 et. seq.) and may make investments in a partnership,
limited partnership, or joint venture formed pursuant to sec-
tion 907 (a) or 907 (c) of that act (42 USC §3937 (a) or (c))
and may purchase shares of stock issued by any West Virginia
housing corporation and may make investments in loans
and commitments for loans to any such corporation:  Provided,
That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the state-chartered banking institution exceed at any time five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the "Small Business Investment Act of 1958," as amended, and of business development corporations created and organized under the act of the Legislature known as the "West Virginia Business Development Corporation Act," as amended: Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(7) The commissioner of banking may prescribe rules and regulations to administer and carry out the purposes of this subsection, including rules and regulations to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) No officer, director, clerk or other employee of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee, embodied in a resolution adopted by a majority vote of such board or committee,
exclusive of the director to whom the loan is made. If any officer, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, clerk or other employee.

(d) Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of a security purchased at a premium, and charging to profit and loss a sum sufficient to bring it to par at maturity.

CHAPTER 32

(H. B. 1194—By Mr. Gilliam)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain limitations and restrictions imposed on branch banks; procedures for authorization of branch banks; authorization of limited off-premises banking facilities; penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

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

(a) No banking institution shall:
(1) Establish or maintain any branch bank, except as otherwise permitted by this section; or

(2) Engage in business at any place other than at its principal office in this state, at a branch bank in this state permitted by this section or at a customer bank communication terminal permitted by section twelve-b of this article: Provided, That at any time each such banking institution and each branch bank established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution, may operate no more than two off-premises walk-in or drive-in banking facility, on or in conjunction with or entirely separate from a parking lot for the customers of such banking institution, for the purpose of receiving bank deposits of all kinds, cashing checks, making change, selling and issuing money orders and travelers checks and receiving payments on loans, savings and rental accounts, and for no other purposes, provided any such off-premises banking facility is located within five thousand feet of the banking house premises or branch bank premises of the banking institution operating such off-premises facility measured between the nearest points of the banking house premises and the premises on which such off-premises banking facility is located. Such off-premises banking facility shall be in addition to any branch bank permitted by this section.

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

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

(1) The construction, lease or acquisition of branch bank facilities in an unbanked area; or
(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

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

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

(1) Not more than three branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution; and

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

(e) The principal office of a banking institution on the effective date of this article shall continue to be the principal office of such banking institution for purposes of establishing branch banks under this section, notwithstanding any subsequent change in the location of such banking institution’s principal office.

(f) It shall be unlawful for any banking institution to establish any branch bank by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution if such establishment would cause the combined deposits of the re-
sulting banking institution to exceed ten percent of the total
deposits of all banking institutions in this state as determined
by the latest available reports of condition as compiled by the
federal deposit insurance corporation.

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

(h) The board shall, upon receipt of any application to
establish a branch bank provide notice of such application
to all banking institutions. 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.

(i) The commissioner shall prescribe the form of the
application for a branch bank and shall collect an examina-
tion and investigation fee of one thousand dollars for each
filed application for a branch bank that is to be established
by the construction, lease or acquisition of a branch bank
facility in an unbanked area and two thousand five hundred
dollars for a branch bank that is to be established by the
purchase of the business and assets and assumption of the
liabilities of, or merger or consolidation with another banking
institution. The board shall complete the examination and in-
vestigation within ninety days from the date on which such
application and fee are received, unless the board requests in
writing additional information and disclosures concerning the
proposed branch bank from the applicant banking institution,
in which event such ninety-day period shall be extended for
an additional period of thirty days plus the number of days
between the date of such request and the date such additional
information and disclosures are received.

(j) Upon completion of the examination and investigation
with respect to such application, the board shall, if a hearing
be required pursuant to subsection (k) of this section, forth-
with give notice and hold a hearing pursuant to the following
provisions:
(1) Notice of such hearing shall be given to the banking institution with respect to which 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 less than ten nor more than thirty days after such notice is given.

(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.

(3) After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, 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.

(k) No state banking institution may establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (h) of this section. The order shall be accompanied by findings of fact that:

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

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

(3) Suitable physical facilities will be provided for the branch bank; and
(4) The applicant state banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation.

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

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

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

CHAPTER 33
(Com. Sub. for H. B. 1461—By Mr. Albright and Mr. Chambers)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers and beauticians generally; providing for obtaining a license to operate a school of barbering or beauty culture; prescribing the method of application and the qualifications for applicants; providing for the inspection of proposed schools; authorizing the board of health to promulgate rules and regulations; empowering the board of health to suspend, revoke
or refuse to renew licenses of the schools; establishing fees for initial license and renewal; authorizing the board of barbers and beauticians to promulgate rules and regulations governing the licensure of instructors; establishing minimum qualifications for instructors; prescribing license fees for instructors; and providing that all rules and regulations promulgated in compliance with the provisions of chapter twenty-nine-a of said code of West Virginia.

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

That section eight, article twenty-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 27. BOARD OF BARBERS AND BEAUTICIANS.**

§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.

1 No person, firm or corporation, whether public or private, and whether organized for profit or not, shall own or operate a school of barbering or beauty culture in this state without first obtaining a license so to do from the board. The application for such license shall be made in writing on forms prescribed and furnished by the board and shall be signed and verified by the applicant. The applicant shall, in addition to such other information as may be reasonably required by the board, furnish evidence that (a) the applicant is professionally competent and financially responsible, (b) adequate physical facilities will be available for the school, and (c) persons teaching or instructing therein are licensed by the board as fully qualified instructors. If an applicant desires to own or operate more than one school of barbering or beauty culture, a separate application shall be made and a separate license shall be issued for each.

17 All applicants for a license to own or operate a school of barbering or beauty culture shall permit an inspection of such proposed school by the inspectors appointed pursuant to sub-
section (d), section one, article fourteen, chapter sixteen of this code to determine whether it is properly fitted and equipped for instruction in barbering or beauty culture. The board of health shall promulgate reasonable rules and regulations to implement and make effective the powers, duties and responsibilities vested in such board in connection with the licensing of schools of barbering and beauty culture. If the applicant has met all of the standards and qualifications prescribed herein by the board of health and has complied with the rules and regulations pertaining to the issuance of the license applied for, the board shall issue such license to the applicant. Thereafter, the board may suspend, revoke or refuse to renew the license of a school whenever it fails to meet the minimum standards and qualifications required for the issuance of an original license. The director of health or his designees shall administer and enforce such actions of the board.

The initial license fee for each school of barbering and for each school of beauty culture shall be five hundred dollars and the annual renewal fee shall be two hundred fifty dollars to be paid in such manner as the board may prescribe, on or before January first of each year. The license shall be permanently displayed in the school, and a suitable sign shall be kept on the front of the school which shall plainly indicate that a school of barbering or beauty culture is operated therein.

The board of barbers and beauticians shall promulgate reasonable rules and regulations prescribing the standards and requirements to be met by applicants for licensure of duly qualified instructors in schools of barbering or beauty culture. Such rules and regulations may provide for the issuance of certificates for instructors, including temporary certificates, and shall prescribe minimum qualifications as to age, education and training for applicants for such certificates. Minimum qualifications to become applicants as student instructors shall include one year's experience as a licensed full-time practicing barber or beautician and two hundred fifty hours of advanced instruction beyond the normal licensure requirements. Each licensed instructor in barbering and beauty culture shall pay an initial registration fee of fifty dollars, and shall renew his certificate annually and pay a renewal fee of fifty dollars
on or before the first day of January of each year. An expired certificate may be reinstated only upon the payment of all lapsed renewal fees, unless such instructor shall have notified the board that he or she desires to be placed on an inactive status during which time he or she shall not be liable for any renewal fees. The applicant for reinstatement shall also be required to meet the qualifications for registration in effect at the time application for reinstatement is made. A licensed instructor shall not also be required to be licensed for active practice or service as provided for in section four of this article, unless such instructor is in fact acting as a barber, beautician, aesthetician or manicurist outside the scope of his employment as an instructor: Provided, That the term "aestheti-cian," used in this section, shall have no effect until and unless the provisions of section one of this article are amended to authorize issuance of rules and regulations relating to aestheticians.

Recognizing that all of the provisions of chapter twenty-nine-a of this code are fully applicable to any and all administrative procedures, and the right of judicial review, in connection with the provisions of this article, but also recognizing that the question has been raised as to whether rules and regulations adopted under the provisions of this section must be promulgated in accordance with the provisions of said chapter twenty-nine-a, it is hereby expressly provided that all such rules and regulations shall be promulgated in compliance with the provisions of said chapter twenty-nine-a.

CHAPTER 34
(Com. Sub. for H. B. 1294—By Mrs. Burke)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, all relating to title; declaration of purpose; definitions; authorization of pro-
gram by referendum; termination of program by referendum; beef industry self-improvement assessment board; administration by board; report to Legislature; rules and regulations; assessment on sales; diary cattle exempt; reimbursement for collecting; refunds; penalties; separability; and sunset provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2F-1. Title.
§19-2F-2. Declaration of purpose.
§19-2F-5. Termination of program by referendum.
§19-2F-6. Beef industry self-improvement assessment board; administration of article by board; report to the Legislature; rules and regulations.
§19-2F-7. Assessment on sales; dairy cattle exempt; reimbursement for collecting.
§19-2F-10. Separability.
§19-2F-11. Termination of program by law.

§19-2F-1. Title.

1 This article shall be known by the short title of the "Beef Check-off Act of 1983."

§19-2F-2. Declaration of purpose.

1 The purpose of this article is to enhance the sale and thus the profit potential of the state's beef industry by supporting efforts to solve problems in livestock health, production, marketing and breeding; by supporting the research and educational activities of the national livestock and meat board and its beef industry council; and by informing and educating the public about the value of beef and beef products.

1 As used in this article:

2 (a) "Beef industry self-improvement assessment board" or "board" means those persons appointed by the governor from nominations submitted by the incorporated beef producer associations in the state.

3 (b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized agent.

4 (c) "Person" means any individual, partnership, corporation, association, fiduciary or other group of persons whether organized or not.

5 (d) "Producer" means any person in the business of producing beef cattle or causing beef cattle to be produced.


1 (a) None of the provisions of this article shall be authorized until sixty days after being ratified through referendum by a majority of the beef producers participating in the referendum.

2 If a referendum is proposed and defeated, a subsequent referendum shall not be held for a period of at least two years.

3 (b) The commissioner, when petitioned by no less than fifty producers, shall call a public hearing in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia as to whether a referendum should be held and the amount of the assessment and if a majority of those present are in favor, shall notify producers of the date of a pending referendum by publishing a notice three times in two newspapers of general circulation and such other places as the commissioner may deem necessary.

4 (c) Producers shall vote at polling places provided in each county for that purpose on ballots furnished by the commissioner. The ballots shall be furnished to producers for voting upon their presentation of proof, such as tax assessment records, sales receipts or income tax records, no more than one year old, showing them to be bona fide producers. The commissioner shall announce the results in two newspapers of
§19-2F-5. Termination of program by referendum.

The commissioner shall provide for a referendum on continuation or cessation of the program within sixty days after receiving notification in writing signifying by signatures that thirty-three and one-third percent or more of the producers request that the program be terminated. A majority of the producers voting in said referendum must vote for continuation of the program or it shall be terminated ninety days after said referendum. If such a referendum is held and if the program is continued, a subsequent referendum shall not be held for at least two years. Unencumbered money left in the fund upon termination of the program shall be deposited in the general fund of the state of West Virginia.

§19-2F-6. Beef industry self-improvement assessment board; administration of article by board; report to Legislature; rules and regulations.

(a) There is hereby created a West Virginia beef industry self-improvement assessment board consisting of nine persons who are residents of the state and citizens of the United States and who shall be and have been actually engaged in that phase of the cattle industry he represents for the preceding five years. Six members of the board shall be beef producers, one a dairy producer, one a public livestock market representative and one a meat packer. The nine members shall be appointed by the governor for terms of three years and may serve successive terms: Provided, That at the inception, three shall be appointed for one year, three for two years and three for three years and that appointments to fill a vacancy shall be only for the unexpired term. In making the appointments, the governor shall take into consideration the recommendations made to him by incorporated organizations in West Virginia who represent or who are engaged in the same type of production as the proposed member of the board. If the governor fails to make an appointment within ninety days after expiration of any term, the board shall make the necessary appointment. Each
member shall hold office until the expiration of the term for
which such member is appointed and until a successor shall
have been duly appointed and qualified. The board shall elect
a chairman, a secretary and a treasurer and shall meet at such
time and place as called by the chairman or by majority of
the board. All meetings shall be held in accordance with the
open meetings law. The board shall pay each member a sti-
pend from board collections not to exceed thirty-five dollars
per meeting attended and expenses for room, meals and mile-
age in the same amount and manner as stipulated in the rules
and regulations promulgated by the governor for state officials
and employees of the state. No member shall receive any other
salary or compensation for his services. The board may contract
for services, may employ and discharge employees and may
provide such facilities and equipment as are necessary for
the employees to perform their duties and may cooperate with
other state or federal agencies or other organizations whose
activities may be beneficial to the purpose of this article. The
board shall not expend funds to influence legislation or any
political campaign.

(b) The board shall administer the beef industry self-im-
provement assessment program including, but not limited to,
receiving assessment funds, disbursing such funds for research
on beef production and beef marketing practices and for edu-
cational purposes. The board may accept grants and gifts from
any private source for expenditure consistent with the pro-
visions of this article: Provided, That all such activity shall be
directed towards increasing the sale of beef and/or beef cattle
without reference to any particular firm, individual, brand or
trade name.

(c) The board shall submit a report, including a complete
fiscal accounting, of activities to the Legislature at the begin-
ing of each annual legislative session.

(d) The board, in order to carry out the provisions of this
article, shall have authority to issue rules and regulations after
a public hearing following due notice to all interested persons
in conformance with the provisions of the state administrative
procedure set forth in chapter twenty-nine-a of this code.
§19-2F-7. Assessment on sales; dairy cattle exempt; reimbursement for collecting.

(a) All livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including direct shipments from farms and other private treaty sales, shall be authorized to deduct the assessment stipulated in the authorizing referendum from the settlement of such cattle and forward it within thirty days to the treasurer of the board. Dairy cattle for milk production purposes are not subject to this assessment. Dairy cattle sold for slaughter or feeding purposes shall be subject to assessment. Five percent of the funds collected shall be retained by the person remitting the funds as reimbursement for their added problems and costs.

(b) The board shall keep accurate records of the amount of assessments and the date on which they were received, the expenditures and the date they were made, and shall preserve such records for at least five years.


(a) Any producer of cattle from whom an assessment has been collected, shall have the right to demand and receive a refund of the total amount of assessment. The demand must be made in writing to the board within thirty days of the assessment and shall contain the name and address of the producer, the amount of the assessment, the name and address of the collecting agent, the date of sale and the invoice number. The board, or its administrative staff, upon determination that the assessment was paid by the producer, shall then make the refund.


(a) When a person who should collect the assessment in section seven of this article fails to do so, or when a person collecting the assessment fails to forward it within thirty days, the board shall certify same to the commissioner who shall write the person giving him fifteen days to begin the collection or forwarding of the assessment: Provided, That the person may submit to the board justification for nonpayment and thereupon, the board may extend said payment period. If
payment is not made within the fifteen-day period or the ex-
tension thereof, the commissioner shall revoke such person’s
license to engage in cattle purchasing activities in the state.
Persons having their license revoked under provisions of this
section shall not be eligible for relicensing for a period of three
years.

§19-2F-10. Separability.

If any of the provisions of this article or the application
thereof to any person or circumstances is held invalid, such
invalidity shall not affect other provisions or applications of
the article which can be given effect without the invalid pro-
vision or application and to this end the provisions of the
article are declared to be separable.

§19-2F-11. Termination of program by law.

This program shall be terminated on the first day of July,
one thousand nine hundred eighty-eight, unless review of its
functions shall be undertaken pursuant to the provisions of
sections nine, ten and eleven, article ten, chapter four of this
code.

CHAPTER 35

(Com. Sub. for H. B. 1709—By Mr. Wiedebusch and Mr. Knight)

[Passed March 15, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve-a, article five, chapter eighteen
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; and to amend chapter five of said code
by adding thereto a new article, designated article twenty-two,
relating to requiring the state and its subdivisions to solicit
bids for all construction projects exceeding twenty-five thou-
sand dollars in cost; allowing rejection of all bids and re-
solicitation of bids; permitting the use of regular full-time em-
ployees in construction projects; providing exceptions to bid-
ding requirements for projects constructed by vocational edu-
cation students and volunteers; and for emergency repairs.
Be it enacted by the Legislature of West Virginia:

That section twelve-a, article five, chapter eighteen, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five of said code be amended by adding thereto a new article, designated article twenty-two, all to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; exceptions.

1 As used in this section, "the state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

6 The state and its subdivisions shall except as provided in this section solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost. Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on said project.

14 Nothing in this section shall apply to work performed on construction or repair projects by regular full-time employees of the state or its subdivisions, nor shall anything in this section prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when such use is a part of the students training program.

20 Nothing herein shall apply to emergency repairs to building components and systems. For the purpose of this paragraph, emergency repairs means repairs that if not made immediately will seriously impair the use of such building components and systems, or cause danger to those persons using such building components and systems.

26 Nothing herein shall apply to any situation where the state or a subdivision thereof shall come to an agreement with
volunteers, or a volunteer group, whereby the governmental
body will provide construction or repair materials, architec-
tural, engineering, technical or any other professional services
and the volunteers will provide the necessary labor without
charge to, or liability upon, the governmental body.

CHAPTER 36
(Com. Sub. for H. B. 1156—By Mr. Love)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty, chapter
eighty-seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the limits on prizes
awarded by a bingo licensee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

§47-20-10. Limits on prizes awarded—General provisions.

Except as provided otherwise in section twenty-two of this
article, during the period of a license, the total value of all
prizes awarded by a licensee, shall not exceed in value sixty-
five percent of the gross proceeds collected during such period
or the sum of one hundred thousand dollars as determined and
assigned under this section whichever amount shall be less:
Provided, That notwithstanding the foregoing limitation, the
total prizes awarded by a licensee, or in the aggregate by two
or more limited occasion licensees holding a joint bingo occa-
sion, for any bingo occasion held pursuant to an annual or
limited occasion license may not exceed in value seven thou-
sand five hundred dollars.

Prizes may be money or merchandise other than beer, non-
intoxicating 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 of purchase.

CHAPTER 37

(Com. Sub. for H. B. 1394—By Mr. Albright)

[Passed March 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, seven, eight, nine, twenty and twenty-four, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-five-a, all relating to renaming the state boxing commission as the state athletic commission; requiring the commission to follow the current United States amateur boxing authority rules and requirements in the sanctioning of amateur boxing events; requiring the commission to promulgate different sets of rules for specified boxing events; and exempting amateur wrestling and boxing events conducted by universities, colleges and high schools from the jurisdiction of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3. Commission to have sole control of boxing, etc., matches; municipality not to tax boxing, etc., club.
§29-5A-4. Licenses to be in lieu of all other licenses.
§29-5A-7. Interference with or restraining of professional boxing or exhibitions.
§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

§29-5A-9. Sanction or permit from commission.

§29-5A-20. Licenses for contestants, referees and managers.


§29-5A-1. Creation of commission; members; officers; seal and rules.

The state boxing commission, heretofore created, is hereby continued and renamed the state athletic commission. The commission shall consist of three persons appointed by the governor, by and with the consent of the Senate, no more than two of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. The members shall serve without pay. The present members and terms of the members of the state boxing commission shall continue as the state athletic commission. At the expiration of the term of each member, his successor shall be appointed by the governor for a term of four years. In the event of a vacancy in said board, said vacancy shall likewise be filled by appointment by the governor and the governor shall likewise have the power to remove any commissioner at his pleasure. Any two members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least two commissioners shall be necessary to render a choice or decision of the commission.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

(a) The commission shall have and hereby is vested with the sole direction, management and control of the jurisdiction over all amateur and professional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or
association; and no boxing, sparring or exhibition shall be con-
ducted, held or given within the state except pursuant to its
authority and held in accordance with this article. The com-
mission may, in its discretion, issue and, at its pleasure, revoke
the license to conduct, hold or give boxing or sparring matches
or exhibitions to any club, corporation, association or indi-

dual. Every license shall be subject to such rules and regu-

lations and amendments thereto as the commission may pre-
scribe. Every application for a license, as herein provided for,
shall be on a blank form provided by the commission. No pro-
moter's license shall be granted to any club, corporation, asso-
ciation or individual, unless the signer of the application be a
bona fide resident of the state of West Virginia. Upon appli-
cation of such promoter's license, the promoter shall pay a
state license fee of one hundred twenty-five dollars for one
year. Such fee shall be in the form of a certified check or
money order and shall be issued to the treasurer of the state
of West Virginia to be deposited in the general fund. Should
such license not be granted, the treasurer shall refund the full
amount. Nonprofit chartered and charitable organizations shall
be exempt from this license fee for all amateur events. No
municipal corporation shall impose any license tax on such
boxing, sparring or exhibition clubs, notwithstanding the pro-
visions of any section of the code respecting municipal taxes
and licenses. The granting of such license to such club by the
commission, or the holding of such license by such club, indi-
gual, corporation or association, shall not prevent the com-
mision from canceling or revoking the license to conduct such
an event, as hereinbefore provided.

(b) In exercising its jurisdiction over amateur boxing, sparr-
ing matches and exhibitions, the commission shall follow the
current United States boxing authority rules and requirements
to enable the proper sanctioning of all participants, referees,
judges and matches or exhibitions conducted under the rules
described in subdivision (1), subsection (c), section twenty-four
of this article and shall cooperate fully with said boxing author-
ity in order that said sanctioning be extended to state boxers.

§29-5A-4. Licenses to be in lieu of all other licenses.

The licenses herein imposed shall be in lieu of all other
licenses or license taxes of the state of West Virginia, and no county, city, town or other municipality or other political subdivision of the state of West Virginia shall be empowered to levy or impose any license or license tax on any such person engaged in the business of conducting boxing or sparring matches and exhibitions under the jurisdiction of and being licensed by the commission.

§29-SA-7. Interference with or restraining of professional boxing or exhibitions.

No person or persons, club, organization or corporation shall, except in accordance with law, interfere with or restrain, or attempt to interfere with or restrain, by any act, threat or otherwise, either within or without this state, the putting on or the conducting of any professional boxing match or exhibition of this state.

§29-SA-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

The commission, at its discretion, may issue a license to promote, conduct or hold professional boxing, sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

Before being granted a license, or the renewal of such license, the applicant must establish to the satisfaction of the commission that he:

(a) Is skilled, or has knowledge, in the profession of boxing;

(b) Is of good moral character;

(c) Is physically fit and mentally sound;

(d) Will conduct his business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing generally;

(e) Will adhere to and comply with all the rules and regulations of the commission pertaining to such license.

In the case of a corporate applicant, these factors shall
pertain to its officers, directors, principal stockholders and employees.

Every license and licensee shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe.

§29-5A-9. Sanction or permit from commission.

No boxing, sparring matches or exhibitions shall be conducted by any individual, club, organization or corporation having a license to conduct any such exhibitions in this state except by a sanction or permit from the commission.

§29-5A-20. Licenses for contestants, referees and managers.

No professional contestant, referee or professional manager shall be permitted to take part in any boxing contest or exhibition unless holding a license from the state, said license to be issued by the commission upon payment of five dollars a year for contestants and referees and three dollars a year for a manager. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the treasurer of the state of West Virginia to be deposited in the general fund. Should such license not be granted, the treasurer shall refund the full amount.


(a) The commission shall promulgate its rules in compliance with the provisions of article three of chapter twenty-nine-a of this code.

(b) The commission shall promulgate such rules as it determines to be necessary to regulate professional boxers, professional boxing matches and exhibitions.

(c) The commission shall promulgate separate rules for amateur boxers and amateur boxing, sparring matches and exhibitions as follows:

(1) Rules which comply with the requirements of the rules of the current United States amateur boxing authority to the extent that any boxer complying with them will be eligible to
participate in any state, national or international boxing match sanctioned by the current United States amateur boxing authority or the international amateur boxing association.


The provisions of this article do not apply to amateur wrestling, amateur boxing, or amateur sparring matches or exhibitions conducted by any university, college or high school.

CHAPTER 38

Be it enacted by the Legislature of West Virginia:

That section two, article six, 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 6. CIVIL SERVICE SYSTEM.

§29-6-2. Definition of terms.

As used in this article unless the context clearly indicates otherwise:

1. "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, department or office.

2. "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service.

3. "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title, and the same schedule of compensation and benefits may be equitably applied to each position in the group.

4. "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class.

5. "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the board of regents.

6. "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system.

7. "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan.

8. "Policymaking position" means a position in which the person occupying it (a) acts as an adviser to, or formulates plans for the implementation of broad goals for, the executive or administrative head of the agency, (b) is in charge of a major administrative component of the agency and (c) reports directly and is directly account-
Ch. 39] Claims 217

able to the administrative or executive head of the agency.

(9) "Position" means a particular job which has been classified based on specifications.

(10) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment.

(11) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917—November 11, 1918), World War II (December 7, 1941—December 31, 1946), the Korean Conflict (June 27, 1950—January 31, 1955), or the Vietnam Conflict (August 5, 1964—May 7, 1975), and who has received a discharge under honorable conditions from such service.

CHAPTER 39

(H. B. 1271—By Mr. Starcher and Mr. Faircloth)

[Passed March 10, 1983; in effect from passage. Approved by the Governor]

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of corrections; the farm management commission; the secretary of state; and the railroad maintenance authority 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 department of corrections, the farm
management commission, the secretary of state and the rail-
road maintenance authority, agencies thereof, which have
arisen due to overexpenditures of the departmental appropri-
tations 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 ex-
cuted 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 pay-
ment thereof out of any fund appropriated and available for
the purpose.

(a) **Claims against the Department of Corrections:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
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<tbody>
<tr>
<td>(1) Ace Adjustment Service, Inc., Agent</td>
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<td>for United Hospital Center, Inc.</td>
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<td>(2) C. K. Agarwal</td>
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<td>(3) Jett S. Andrick</td>
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<td>(4) Beckley Medical Arts, Inc.</td>
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<td>(5) Gordon A. Bobbitt</td>
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<td>(6) Bowlings, Inc.</td>
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<td>(7) Butler's Pharmacy</td>
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<td>(8) Chandra P. Sharma, M.D., Inc.</td>
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<td>(9) FMRS Mental Health Council, Inc.</td>
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<td>(10) Grafton City Hospital</td>
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<td>(11) Greenbrier Physicians, Inc.</td>
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<td>(12) Harold E. Harvey, M.D., Inc.</td>
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<tr>
<td>(13) Lois McElwee Memorial Clinic</td>
<td>$140.00</td>
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</tbody>
</table>
### Claims

#### Claims against the Farm Management Commission:

- (1) Exxon Co., U.S.A. $219.71
- (2) Mountaineer Motor Sales, Inc. $86.87
- (3) Scott Saw Sales & Services $42.44
- (4) Boso Agri-Center, Inc. $2,288.94

#### Claim against the Secretary of State:

- (1) J. P. Currence $143.00
Claim against the Railroad Maintenance Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Wilson Welding Supply Company $ 340.00

Total $431,798.46

CHAPTER 40

(H. B. 1272—By Mr. Starcher and Mr. Faircloth)

[Passed March 10, 1983; 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 attorney general; board of regents; the farm management commission; department of corrections; department of culture and history; department of education; department of finance and administration; department of health; department of highways; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; human rights commission; insurance commissioner; municipal bond commission; public legal services; secretary of state; state tax department; supreme court of appeals; and workmen's compensation 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 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 war-
rants for the payment thereof out of any fund appropriated
and available for the purpose.

(a) Claim against the Attorney General:

(1) Angela Preston .......................... $ 110.00

(b) Claims against the Board of Regents:

(1) Raymond L. Maynard
    from Acct. No. 8632-06 ............... $ 1,061.74

(1) Susan L. Cale
    from Acct. No. 9280 .................. $ 530.00

(2) Margaret Graff
    from Acct. No. 9280 .................. $ 1,096.50

(3) Mr. and Mrs. Stephen Kent Hill
    from Acct. No. 8610-31 ............... $ 93.35

(4) McAnallen Brothers, Inc.
    from Acct. No. 8835 .................. $ 20,228.00

(5) William B. McGinley
    from Acct. No. 8610-41 ............... $ 500.00

(6) Shane Meat Company
    from Acct. No. 8610-31 ............... $ 1,412.52

(c) Claim against the Farm
    Management Commission:

(1) Department of Employment Security $ 5,308.35

(d) Claims against the Department
    of Corrections:

(1) Silbern D. Goddard and
    Metta Goddard .......................... $ 2,723.00
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<tr>
<th>Claim Number</th>
<th>Description</th>
<th>Amount</th>
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<td>39</td>
<td>(2) Green Tab Publishing</td>
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<td>(3) Reynolds Memorial Hospital, Inc.</td>
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<td>41</td>
<td>(4) Weslakin Corporation</td>
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<td>42</td>
<td>(5) Department of Employment Security</td>
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<td>43</td>
<td>(6) Donald A. Harman</td>
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<td>44</td>
<td>(c) Claim against the Department of Culture and History:</td>
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<td>45</td>
<td>(1) Department of Employment Security</td>
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<td>46</td>
<td>(f) Claim against the Department of Education:</td>
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<td>47</td>
<td>(1) Moore Business Forms, Inc.</td>
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<td>(g) Claims against the Department of Finance and Administration:</td>
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<td>(1) Swain Window Cleaning Service</td>
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<td>(2) Appalachian Engineers, Inc.</td>
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<td>(3) Johnson Controls, Inc.</td>
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<td>(h) Claims against the Department of Health:</td>
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<td>(1) American Hospital Supply</td>
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<td>(2) Narendra Bora</td>
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<td>55</td>
<td>(3) Carol Jo Brown</td>
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<td>(4) Larry Greathouse</td>
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<td>(5) Lester A. Kubski</td>
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<td>(6) The Michie Company</td>
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<td>59</td>
<td>(7) William E. Coy</td>
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<td>(8) Chad Cunningham</td>
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<td>(9) Department of Employment Security</td>
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<td>(10) Donald R. Hogsett</td>
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<td>(11) Janet T. Surface</td>
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<td>(i) Claims against the Department of Highways:</td>
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<td>Shirley R. Adams and Billie Adams</td>
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<td>Larry L. Bennett</td>
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<td>Paul Gyke and Joe Ann Gyke</td>
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<td>84</td>
<td>Patricia Ann Hall and Lacy Hall</td>
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<td>Glenn E. Hiller</td>
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<td>86</td>
<td>Mark A. Hissam and Julia A. Hissam</td>
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<td>Ricky S. Howerton</td>
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<td>Industrial Gas &amp; Supply Company</td>
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<td>Waitman D. Jett and Marilyn Jett</td>
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<td>90</td>
<td>Chester Jones</td>
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<td>John T. May</td>
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<td>Monongahela Power Company</td>
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<td>Novo Corporation</td>
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<td>John Orndoff</td>
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<td>98</td>
<td>Sidney Pozell and Lillian Pozell</td>
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<td>Frank E. Redd</td>
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<td>101</td>
<td>Savage Construction Company, Inc.</td>
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<td>102</td>
<td>Ethea M. Scott</td>
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<td>103</td>
<td>Harry R. Sellards and Francis A. Sellards</td>
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<td>Stark Electric, Inc.</td>
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<td>105</td>
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<tr>
<td>106</td>
<td>Mary N. Stultz</td>
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<tr>
<td>107</td>
<td>Velma Sutton</td>
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<td>Terra Aqua Conservation</td>
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<td>Thomas R. Treadway</td>
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<tr>
<td>110</td>
<td>Tri-City Welding Supply Company</td>
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### Claims

<table>
<thead>
<tr>
<th>Number</th>
<th>Claimant</th>
<th>Amount</th>
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<tr>
<td>113</td>
<td>Wayne Concrete Co.</td>
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<td>114</td>
<td>Jesse C. Anderson</td>
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<td>115</td>
<td>Gene Brady Beegle</td>
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<td>Black Rock Contracting, Inc.</td>
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<td>117</td>
<td>Browning-Ferris Industries, Chemical Service, Inc.</td>
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<td>118</td>
<td>Fibair, Inc.</td>
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<td>119</td>
<td>Benjamin C. Henry</td>
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<td>120</td>
<td>Holly, Kenney, Schott, Inc.</td>
<td>$13,755.00</td>
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<td>121</td>
<td>Kanawha County Commission</td>
<td>$2,362.08</td>
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<td>122</td>
<td>Ruth A. Krippene</td>
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<td>123</td>
<td>Thomas E. Layton, II</td>
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<td>Doris Leslie</td>
<td>$146.47</td>
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<td>125</td>
<td>Lucas Tire, Inc.</td>
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<tr>
<td>126</td>
<td>James C. Martin, Jr. and Shirley B. Martin</td>
<td>$6,846.00</td>
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<tr>
<td>127</td>
<td>Roy G. Shawver</td>
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<td>Ruby E. Shrader</td>
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<td>C. O. Smith, Jr.</td>
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<td>St. Paul’s Protestant</td>
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<td>Henry A. Kay and Charles E. Kay</td>
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<td>132</td>
<td>from Acct. No. 8300</td>
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<td>133</td>
<td>The Chesapeake &amp; Potomac Telephone Company</td>
<td>$7,591.93</td>
</tr>
<tr>
<td>134</td>
<td>Victor Frisco and Janet Frisco</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

(j) **Claims against the Department of Motor Vehicles:**

(TO BE PAID FROM STATE ROAD FUND)

(1) General Motors Acceptance Corporation $4,245.98

(2) Harold E. Wiley $14.00

(k) **Claims against the Department of Natural Resources:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Henry A. Kay and Charles E. Kay from Acct. No. 8300 $3,800.00

(TO BE PAID FROM GENERAL REVENUE FUND)

(2) The Chesapeake & Potomac Telephone Company $7,591.93

(3) Victor Frisco and Janet Frisco $500.00
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<tr>
<th>Claim Type</th>
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<tr>
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<td>Department of Employment Security</td>
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<td>Claim against the Division of Vocational Rehabilitation</td>
<td>Evans Lumber Company</td>
<td>$458.97</td>
</tr>
<tr>
<td>Claim against the Human Rights Commission</td>
<td>Department of Employment Security</td>
<td>$13,577.00</td>
</tr>
<tr>
<td>Claim against the Insurance Commissioner</td>
<td>Department of Employment Security</td>
<td>$5,511.92</td>
</tr>
<tr>
<td>Claim against the Municipal Bond Commission</td>
<td>City of Oak Hill</td>
<td>$531.49</td>
</tr>
<tr>
<td>Claims against Public Legal Services</td>
<td>David R. Gold and Louis H.</td>
<td>$1,563.00</td>
</tr>
<tr>
<td></td>
<td>James D. Terry</td>
<td>$345.00</td>
</tr>
<tr>
<td>Claims against the Secretary of State</td>
<td>Department of Employment Security</td>
<td>$2,279.12</td>
</tr>
<tr>
<td></td>
<td>Chicago Embroidery Company</td>
<td>$3,468.07</td>
</tr>
</tbody>
</table>
(3) Mountaineer Office Supply, a division of F & M Supply Co., Inc. $1,860.00

(s) Claim against the State Tax Department:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Charleston Business Machines $95.00

(t) Claims against the Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) C. Elaine Friend $165.00
(2) David Lee Closson $50.00
(3) David R. Gold and Louis H. Khourey, d/b/a Gold & Khourey $107.50

(TO BE PAID FROM SUPREME COURT GENERAL JUDICIAL FUND, ACCOUNT NO. 1110-00, FROM APPROPRIATION FOR CURRENT FISCAL YEAR 1982-83)

(1) Arthur U. Browning $4,500.00
(2) Harold E. Darlington $4,500.00
(3) E. W. Day $4,500.00
(4) C. P. Dingler $4,500.00
(5) Ruth A. Donaldson $4,500.00
(6) Peter H. Dougherty $4,500.00
(7) Glen Greene $4,500.00
(8) Garry Osburn $4,500.00
(9) Sharrell Stickler $3,375.00
(10) Eugene C. Suder $3,375.00
(11) D. M. VandeLinde $3,375.00
(12) Lester Warner $3,375.00
(13) Wetzel K. Workman $4,500.00
(14) Nat Marino $4,500.00
(15) Norma Tarr $4,500.00
(16) Richard D. Graham, Jr. $4,500.00
(17) Robert A. Isner $4,500.00
(18) Howard R. Nordeck $4,500.00
213 (u) Claim against the Workmen's
214 Compensation Fund:
215 (TO BE PAID FROM SPECIAL REVENUE FUND)
216 (1) Janet T. Surface .............................. $6,828.33
217
218 The Legislature finds that the above moral obligations and
219 the appropriations made in satisfaction thereof shall be the full
220 compensation for all claimants, and that prior to the payments
221 to any claimant provided for in this bill, the court of claims shall
222 receive a release from said claimant releasing any and all claims
223 for moral obligations arising from the matters considered by
224 the Legislature in the finding of the moral obligations and the
225 making of the appropriations for said claimant. The court of
226 claims shall deliver all releases obtained from claimants to the
227 department against which the claim was allowed.

CHAPTER 41
(H. B. 1985—By Mr. Starcher and Mr. Faircloth)

[Passed March 5, 1983; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for reparations of
citizens of West Virginia who were innocent victims of crimes
occurring in this state 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:

REPARATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for repara-
tion to be moral obligations of the state and directing pay-
ment thereof.

1 The Legislature has duly considered the findings of fact and
2 recommendations for awards reported to it by the court of
3 claims in respect to the following named claimants, citizens of
4 West Virginia, who were innocent victims of crime within this
5 state and entitled to reparations; and in respect to each of
6 such named claims the Legislature adopts those findings of
7 fact as its own, hereby declares it to be the moral obligation
8 of the state to pay each such claimant in the amount specified
9 below, and directs the auditor to issue warrants for the pay-
10 ment thereof out of any fund appropriated and available for
11 the purpose.

12 Claims for crime victims reparation awards:
13
14 (TO BE PAID FROM CRIME VICTIMS REPARATION FUND)
15
16 (1) Jeffery Kim Williams .......................... $ 4,161.74
17 (2) Ruth A. Greene .............................. $ 214.50
18 (3) Wanda Lee Damron .......................... $ 6,666.66
19 (4) Wanda Lee Damron, next friend of
20 Alanda Sue Damron ............................. $13,333.34
21 (5) Donald R. Steiner .......................... $ 7,804.13
22 (6) James E. Combs .......................... $ 560.00
23 (7) Hazel C. Campbell ........................ $ 489.19
24 (8) Thelma P. Shaw .......................... $ 2,672.40
25 (9) Lora L. White ............................ $ 6,593.29
26 (10) Betty L. White, next friend of
27 Gary D. White ............................... $ 85.50
28 (11) Jane A. Elkins .......................... $ 96.00
29 (12) Charles L. Whited ........................ $ 983.00
30 (13) Marvin H. Dill .......................... $20,000.00
31 (14) Agnes M. Vaughan ........................ $ 9,148.51
32 (15) Jeffrey W. Gunter ........................ $ 4,800.00
33 (16) Virginia P. Keene, next friend of
34 Audrey L. Keene .............................. $ 583.40
35
36 Total .............................................. $78,191.66
37
38 The Legislature finds that the above moral obligations and
39 the appropriations made in satisfaction thereof shall be the full
40 compensation for all claimants herein; provided that any
41 claimant herein who, subsequent to the payment of an award,
42 receives or recovers benefits or advantages for the economic
43 loss not prior considered by the court of claims in the course
44 of and in reduction of the award of reparations, shall inform
45 the court of claims and crime victims reparation division of
46 such recovery for determination of the amounts thereof and
47 requirement for the deposit thereof in the crime victims re-
48 paration fund.
AN ACT to amend and reenact section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the recovery of attorney’s fees, court costs and collection costs and charges on delinquent student loan obligations; and providing limitations on any such recovery.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-128. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer’s obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector’s fee or charge for services rendered: Provided, That attorney’s fees, court costs
and other reasonable collection costs and charges necessary
for the collection of any amount due upon delinquent edu-
cational loans made by any institution of higher education
within this state may be recovered when the terms of the obli-
gation so provide. Recovery of attorney’s fees and collection
costs may not exceed twenty percent of the amount due and
owing to any such institution: Provided, however, That no-	hing contained in this subsection shall be construed to limit
or prohibit any institution of higher education from paying
additional attorney fees and collection costs as long as such
additional attorney fees and collection costs do not exceed an
amount equal to five percent of the amount of the debt ac-
tually recovered and such additional attorney fees and col-
lection costs are deducted or paid from the amount of the
debt recovered for the institution or paid from other funds
available to the institution;

(d) The collection of or the attempt to collect any interest
or other charge, fee or expense incidental to the principal obli-
gation unless such interest or incidental fee, charge or expense
is expressly authorized by the agreement creating the obliga-
tion and by statute; and

(e) Any communication with a consumer whenever it ap-
ppears that the consumer is represented by an attorney and the
attorney’s name and address are known, or could be easily
ascertained, unless the attorney fails to answer correspondence,
return phone calls or discuss the obligation in question or un-
less the attorney consents to direct communication.

CHAPTER 43

(S. B. 145—By Mr. McGraw, Mr. President)

[Passed February 25, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred one, article
one, chapter sixty-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact sections two hundred four and two
hundred twelve, article two, and section four hundred one, article four of said chapter, relating to controlled substances generally; defining certain terms; adding to the uniformed controlled substances act definitions of the terms "imitation controlled substance" and "placebo"; redefining the terms "deliver" and "distribute"; updating the uniform controlled substances act; adding the drugs N-ethylamphetamine and parahexyl to Schedule I; deleting the drug loperamide from Schedule V; making it unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance and prescribing penalties therefor; making it unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance and prescribing penalties therefor; making it unlawful for a person to knowingly or intentionally possess a controlled substance and prescribing penalties therefor; making it unlawful for a person to knowingly or intentionally create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance, or to create, possess, or sell or otherwise transfer equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identification upon a counterfeit substance, an imitation counterfeit substance, or the container or label of such substance; and prescribing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Definitions.
2. Standards and Schedules.
4. Offenses and Penalties.

ARTICLE I. 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:
A practitioner (or, in his presence, by his authorized
agent), or
The patient or research subject at the direction and
in the presence of the practitioner.
(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) "Imitation controlled substance" means (1) a
controlled substance which is falsely represented to be a
different controlled substance, or (2) a drug or substance
which is not a controlled substance but which is falsely
represented to be a controlled substance, or (3) a controlled
substance or other drug or substance or a combination
thereof which is shaped, sized, colored, marked, imprinted,
numbered, labeled, packaged, distributed or priced so as to
cause a reasonable person to believe that it is a controlled
substance.
(g) "Deliver" or "delivery" means the actual,
constructive, or attempted transfer from one person to
another of (1) a controlled substance, whether or not there is
an agency relationship, (2) a counterfeit substance, or (3) an
imitation controlled substance.
(h) "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. 
(i) “Dispenser” means a practitioner who dispenses.

(j) “Distribute” means to deliver, other than by adminis-
tering or dispensing, a controlled substance, a counterfeit 
substance or an imitation controlled substance.

(k) “Distributor” means a person who distributes.

(l) “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.

(m) “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.

(n) “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.

(o) "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.

(p) "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.
(q) "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.

(r) "Opium poppy" means the plant of the species "Papaver somniferum L.," except its seeds.

(s) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(t) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(v) "Practitioner" means:

(I) 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.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "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.

(y) "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.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-212. Schedule V.

§60A-2-204. Schedule I.
1 (a) The controlled substances listed in this section are
2 included in Schedule I.
3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following opiates, including its
5 isomers, esters, ethers, salts and salts of isomers, esters, and
6 ethers whenever the existence of such isomers, esters,
7 ethers, and salts is possible within the specific chemical
8 designation:
9 (1) Acetylmethadol;
10 (2) Allylprodine;
11 (3) Alphacetylmethadol;
12 (4) Alphameprodine;
13 (5) Alphamethadol;
14 (6) Alpha-methylfentanyl;
15 (7) Benzethidine;
16 (8) Betacetylmethadol;
17 (9) Betameprodine;
18 (10) Betamethadol;
19 (11) Betaprodine;
20 (12) Clonitazene;
21 (13) Dextromoramide;
22 (14) Diampromide;
23 (15) Diethylthiambutene;
24 (16) Difenoxin;
25 (17) Dimenoxadol;
26 (18) Dimepheptanol;
27 (19) Dimethylthiambutene;
28 (20) Dioxaphethyl butyrate;
29 (21) Dipipanone;
30 (22) Ethylmethylthiambutene;
(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:

61 (1) Acetorphine;
62 (2) Acetyldihydrocodeine;
63 (3) Benzylmorphine;
64 (4) Codeine methylbromide;
65 (5) Codeine-N-Oxide;
66 (6) Cyprenorphine;
67 (7) Desomorphine;
68 (8) Dihydromorphine;
69 (9) Drotebanol;
70 (10) Etorphine (except HCl Salt);
71 (11) Heroin;
72 (12) Hydromorphinol;
CONTROLLED SUBSTANCES

73 (13) Methyldesorphine;
74 (14) Methylidihydromorphine;
75 (15) Morphine methylbromide;
76 (16) Morphine methylsulfonate;
77 (17) Morphine-N-Oxide;
78 (18) Myrophine;
79 (19) Nicocodeine;
80 (20) Nicomorphine;
81 (21) Normorphine;
82 (22) Phoclodine;
83 (23) Thebacon.

84 (d) Unless specifically excepted or unless listed in 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-methylenedioxyamphetamine;

(3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;

(4) 5-methoxy-3,4-methylenedioxyamphetamine;

(5) 4-methoxyamphetamine; also known by these trade or other names: 4-methoxy-amethylphenethylamine; paramethoxynaphthaline; PMA;

(6) 3,4,5-trimethoxyamphetamine;

(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylamino-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”;
112 (9) Dimethyltryptamine; known also by the name “DMT”;

114 (10) 4-methyl-2,5-dimethoxyamphetamine; known also by these trade and other names: 4-methyl-2, 5-dimethoxy-amphetamine; “DOM”; “STP”;

117 (11) Ibogaine; 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; tabernanthe iboga;

121 (12) Lysergic acid diethylamide;

122 (13) Marihuana;

123 (14) Mescaline;

124 (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;

130 (16) N-ethyl-3-piperidyl benzilate;

131 (17) N-methyl-3-piperidyl benzilate;

132 (18) Psilocybin;

133 (19) Psilocyn;

134 (20) Tetrahydrocannabinols; including synthetic 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:

140 Delta 1

141 Cis or trans tetrahydrocannabinol, and their optical isomers;

143 Delta 6

144 Cis or trans tetrahydrocannabinol, and their optical isomers;

146 Delta 3, 4
Cis or trans tetrahydrocannabininil 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) Thiienyl analog of phencyclidine; TPCP;

(22) Ethylamine analog of phencyclidine...Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine...Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(24) N-ethylamphetamine;

(25) Parahexyl.

(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-2-212. Schedule V.

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

(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) 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.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;
A substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section 407, subject to the limitations specified in said section 407, or upon conviction, such person may be confined in the county jail not less than
ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marihuana shall be disposed of under said section 407.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(Any person who violates this subsection is guilty of a misdemeanor, and, upon conviction, may be imprisoned in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more, who violates subdivision (1) of this subsection, and, in so doing distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

CHAPTER 44
(S. & 190—by Mr. Heck)

[Passed February 16, 1983; in effect ninety days from passage. Approved by the Governor.]
and reenact section ten, article seven, chapter thirty-one of said code; to amend and reenact section four, article ten of said chapter thirty-one; and to amend and reenact section forty-three, article four, chapter thirty-one-a of said code, all relating to allowing building and loan associations, industrial banks, credit unions and banking institutions to offer negotiable order of withdrawal accounts to any officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof who is depositing public funds.

Be it enacted by the Legislature of West Virginia:
That section forty-four, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article seven, chapter thirty-one of said code, be amended and reenacted; that section four, article ten of said chapter thirty-one be amended and reenacted; and that section forty-three, article four, chapter thirty-one-a be amended and reenacted, all to read as follows:

Chapter
31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

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

1 Building and loan associations may permit the owner of a
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 or if such deposit or account consists of public
funds deposited by an officer, employee or agent of the
United States, any state, county, municipality or political
subdivision thereof.
ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

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

1. 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 by its board of directors or duly authorized officers or agents only those 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. 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 or if such deposit or account consists of public funds deposited by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof.

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

3. (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, firm or corporation in excess of twenty percent of the aggregate paid-up capital and surplus of such industrial bank;

(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;

(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;

(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;

(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;

(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;

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

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

(11) Receive checking accounts or demand deposits.

ARTICLE 10. CREDIT UNIONS.

A credit union shall have the following powers:

(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);

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

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

d) To deposit funds in state and national banks;

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

(f) To borrow money as hereinafter indicated;

(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 or if such deposit or account consists of public funds deposited by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof.
CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

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

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 or if such deposit or account consists of public funds deposited by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof.

CHAPTER 45

(S. B. 315—By Mr. Heck and Mr. Tomblin)

[Passed March 4, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, nine, eleven, fourteen, sixteen and seventeen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to industrial loan companies; definitions; incorporation requirements; investment limitations; certificate of indebtedness insurance; loan and certificate of indebtedness limitations; branching limitations; penalties; qualifications of board of directors.

Be it enacted by the Legislature of West Virginia:

That sections three, four, nine, eleven, fourteen, sixteen and seventeen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-3. Definitions.

§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

§31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.

§31-7-11. Powers of industrial loan companies; limitation of powers.

§31-7-14. Branch industrial banks forbidden; limited off-premises industrial bank facility permitted; branch industrial loan company permitted; limitation on purchases of industrial bank stock; penalties.

§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.

§31-7-17. Directors; officers.

§31-7-3. Definitions.

1 As used in this article, unless the context otherwise requires a different meaning, the term:

3 (a) “Board” means the West Virginia board of banking and financial institutions;

5 (b) “Commissioner” or “commissioner of banking” means the commissioner of banking of West Virginia and includes the department of banking of West Virginia;

8 (c) “Deposit” or “deposits” means the unpaid balance of money or its equivalent received or held in the usual course of business and for which there is given or there is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or thrift account, or which is evidenced by a certificate of deposit;

14 (d) “Industrial bank” means any corporation formed under the provisions of this article with the approval of the board and which is authorized to receive deposits from the general public, and such corporations are hereby declared to be banking institutions within the meaning of section two, article one, chapter thirty-one-a, subject to the limitations contained in this article; and

21 (e) “Industrial loan company” means any corporation formed under the provisions of this article with the approval of the commissioner of banking of this state and
which is authorized to sell or offer for sale its secured or unsecured evidences or certificates of indebtedness as hereinafter prescribed, but shall not be authorized to accept deposits.

§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

(a) In the case of an industrial loan company, any number of persons may become an industrial loan company on the terms and conditions and subject to the liabilities prescribed in this article. The name of any industrial loan company formed under this article shall not contain the words "savings" or "savings and loan" and shall not be that of any other existing corporation of this state: Provided, That any such corporation heretofore organized which uses the words "savings and loan" as a part of its corporate name shall be authorized to continue to use such words. The capital stock of any such corporation shall not be less than twenty-five thousand dollars, and shall consist of shares of common stock. The voting power and control of the corporation during its life shall be vested in the common stock only if more than one class of stock is to be issued. Such common stock, with which it will commence business, shall be paid in before such corporation shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization.

(b) In the case of an industrial bank, any number of persons, not fewer than five, citizens of this state, may become an industrial bank on the terms and conditions and subject to the liabilities prescribed by this article and the provisions of article four, chapter thirty-one-a of this code subject to such exceptions contained in this article. The name of any industrial bank formed under the provisions of this subsection (b), section four, shall be, "Industrial Financing Corporation," and shall include no other words except a trading area, community, city, county or other local identity approved by the board. The capital stock requirements of any such industrial bank shall be the same as those prescribed in subsections (a) and (c), section three, article four, chapter thirty-one-a of this code.
voting power and control of any industrial bank shall be vested in the common stock only and such corporations shall issue but one class of stock. Such common stock with which it will commence business shall be paid in before such corporation shall be authorized to engage in business as an industrial bank except such business as is incidental and necessarily preliminary to its organization.

§31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.

Persons desiring to form an industrial loan company shall sign and acknowledge an agreement of incorporation, as provided in article one of this chapter.

The agreement shall be delivered to the secretary of state, who, after the agreement has been approved in writing by the commissioner of banking, shall issue to the incorporators his certificate under the great seal of the state as provided in article one of this chapter: Provided, That hereafter no charter or branch office certificate shall be issued to any industrial loan company under the provisions of this article, nor shall any amendment under general law or under the provisions of this article be made to the charter of any existing industrial loan company coming within the terms of this article, whether heretofore or hereafter organized, until the application for such charter or for an amendment to such already existing charter or a branch office certificate has been approved in writing by the commissioner of banking. Application for a new charter or new branch office certificate shall be filed in duplicate with the commissioner of banking, accompanied by an examination and investigation fee of one thousand dollars payable to the commissioner. A charter, when issued, shall be filed and recorded as provided by law for general corporations organized under the laws of this state. The provisions of section five, article two, chapter thirty-one-a, insofar as the same relates to financial institutions, other than banking institutions, shall apply to the application and issuance of a certificate or license by the commissioner
§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:

2 (1) Lend money to any person, firm or corporation, secured by the obligation of such person, firm or corporation, or otherwise;

3 (2) Notwithstanding the provisions of subdivision (1), subsection (b) of this section, 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.

4 Not later than the thirty-first day of December, one thousand nine hundred eighty-four, every industrial loan company selling or offering for sale its secured or unsecured evidences or certificates of indebtedness, pursuant to this subdivision, shall obtain insurance for or a guarantee of those evidences or certificates of indebtedness by or through an insurance company or guarantee fund acceptable to and approved by the commissioner. The insurance or guarantee shall provide for the redemption of the investment of the evidence or certificate holder in the event of liquidation, insolvency or bankruptcy of the industrial loan company. The amount of insurance or guarantee benefit to each holder of an evidence or certificate, as an individual or multi-party account, shall at all times be in full force and be equal to the industrial loan company's liability under the evidence or certificate or one hundred thousand dollars, whichever is less.

5 Notwithstanding the provisions of subdivision (1),
subsection (b), section four, article two, chapter thirty-one-
a of this code, the commissioner may make available to any
accepted and approved insurance company or guarantee
fund the reports of examination and other examination
findings of any industrial loan company, the evidences or
certificates of indebtedness of which that insurance
company or guarantee fund is insuring or guaranteeing. For
purposes of this subdivision, an insurance company or
guarantee fund includes any insurance company
authorized to do business in this state, an insurance or
guarantee fund organized under the laws of the United
States, this state or any other state with the express purpose
or authority to guarantee the accounts of industrial loan
companies or any other person who contracts with
industrial loan companies to insure or guarantee accounts:
Provided, That no insurance company or guarantee fund
shall be deemed to be providing insurance within the
meaning of section one, article one, chapter thirty-three of
this code merely because such company or fund insures or
guarantees evidences or certificates under the provisions of
this subdivision, nor shall any person be deemed to be
offering insurance insofar as his activities involve the
offering of insurance or guarantees under the provisions of
this subdivision;

(3) Buy and sell bonds, obligations of any person, firm or
corporation, the United States, and any department, board,
bureau or agency of the United States and buy and sell any
general obligations of the state of West Virginia;

(4) 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. 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;

(5) 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
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;

(6) 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 sixty-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 (6)
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) 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 except the
obligations of the United States or any department, board,
bureau or agency of the United States or any general
obligations of the state of West Virginia shall not be subject
to such limitation;
(3) 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;

(4) 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;

(5) Have outstanding at any time its evidences or certificates of indebtedness and any other debt, in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital (voting and controlling stock) and surplus;

(6) Deposit any of its funds with any other corporation unless such corporation is insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or is approved, in writing, by the commissioner;

(7) 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 that is not subordinated to its evidences or certificates of indebtedness 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;

(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.
An industrial loan company, when not exercising the power granted under subdivision (2), subsection (a) of this section, shall not be subject to subdivisions two, three, four, five, six and seven, subsection (b) of this section.

§31-7-14. Branch industrial banks forbidden; limited off-premises industrial bank facility permitted; branch industrial loan company permitted; limitation on purchases of industrial bank stock; penalties.

(a) No industrial bank shall:

(1) Install or maintain any branch industrial bank; or

(2) Engage in business at any place other than at its principal office in this state: Provided, That at any time any such industrial bank may operate one and only one off-premises walk-in or drive-in industrial banking facility, on or in conjunction with or entirely separate from a parking lot for the customers of such industrial bank, for the purpose of receiving deposits, cashing checks, making change, selling and issuing money orders and travelers checks and receiving payments on installment accounts, and for no other purposes, provided such off-premises banking facility is located within two thousand feet of the banking-house premises of the industrial bank operating such off-premises facility measured between the nearest points of the banking-house premises and the premises on which such off-premises banking facility is located.

(b) It shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of more than seven industrial banks, or to control in any manner the election of a majority of the directors of more than seven industrial banks, and the provisions of this subsection shall govern and control irrespective of any other provision of this code restricting or limiting the ownership or control of voting shares of industrial banks or the control of the election of directors thereof, whether such other provision was enacted before or after the enactment of this article.
(c) No industrial loan company shall install or maintain any branch industrial loan company, unless it has applied for and received a branch office certificate from the commissioner. Application for a branch office certificate shall be filed in duplicate with the commissioner, on forms prescribed by the commissioner, accompanied by an examination and investigation fee of one thousand dollars payable to the commissioner. The provision of section five, article two, chapter thirty-one-a of this code, insofar as the same relates to financial institutions, other than banking institutions, shall apply to the application and issuance of a branch office certificate or license by the commissioner to an industrial loan company.

(d) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen, article eight, chapter thirty-one-a of this code.

§31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.

1 The stockholders of each industrial loan company shall meet annually, a majority of the outstanding voting stock to constitute a quorum; and it shall be the duty of the secretary to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the year next preceding. At such meeting the stockholders shall elect a board of directors of not less than five nor more than twenty-five. Special meetings may be called by order of the board of directors or by request in writing of ten percent of the stockholders.

12 In all elections of directors of the corporation each stockholder shall have the right to cast one vote for each share of stock owned by him and entitled to vote, and he may cast the same in person or by proxy, for as many persons as there are directors to be elected, or he may cumulate such votes and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal; or he may distribute them on the same principle among as many
candidates and in such manner as he may desire, and the directors shall not be elected in any other manner, and on any other question to be determined by a vote of shares at any meeting of stockholders each stockholder shall be entitled to one vote for each share of stock owned by him and entitled to vote, and he may exercise this right in person or by proxy, but if by proxy, in no instance can it be voted in any meeting other than which it was first intended.

The provisions of section twenty, article four, chapter thirty-one-a shall govern and control stockholders' meetings of industrial banks.

§31-7-17. Directors; officers.

The affairs of every industrial bank shall be managed by a board of not less than five nor more than twenty-five directors who shall meet at least once each month, a majority of whom shall at all times be bona fide residents of this state, and shall own and hold in his own name at least five hundred dollars par value in unpledged shares of the capital stock or voting stock of such industrial bank. Immediately upon the adjournment of the stockholders' meeting or as soon thereafter as convenient, the newly elected directors shall meet and every such director elected shall take an oath that he will, so far as duty devolves on him, diligently and honestly administer the affairs of such industrial bank or industrial loan company, and will not knowingly and willingly violate, or permit to be violated, any of the provisions of this article. Such oath, when subscribed by the director making it, and certified by the officer before whom it was taken, shall immediately be transmitted to the commissioner of banking, and shall be filed and preserved in his office. Should a director fail to subscribe to the oath herein provided for within sixty days after notice of his election, thereupon the remaining directors shall elect another director in his stead.

It shall be the duty of the board at their organization meeting or as soon thereafter as convenient to elect a president who shall be a director, one or more vice presidents, a secretary or manager, treasurer and such other officers necessary for the conduct of business as may be designated in the bylaws.
AN ACT to amend and reenact section thirteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article ten of said chapter thirty-one; to amend and reenact section eight, article two, chapter thirty-one-a of said code; to amend and reenact section five, article four of said chapter thirty-one-a; to amend and reenact section five, article eight-a of said chapter thirty-one-a; and to amend and reenact section one hundred five, article four, chapter forty-six-a of said code, all relating to financial institutions; department of banking; banks and banking; state banking institutions and services generally; bank holding companies; industrial banks and industrial loan companies; credit unions; supervised lenders; creating a special revenue account for the deposit of assessments, fees and expenses; authorizing the commissioner to assess certain financial institutions and bank holding companies; providing the commissioner with the authority to establish the assessments not to exceed certain maximums; and increasing certain fees.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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 six, article ten of said chapter thirty-one be amended and reenacted; that section eight, article two, chapter thirty-one-a of said code be amended and reenacted; that section five, article four of said chapter thirty-one-a be amended and reenacted; that section five, article eight-a of said chapter thirty-one-a be amended and reenacted; and that section one hundred five, 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 31. CORPORATIONS.

Article 7.
10. Credit Unions.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-13. Supervision and control.

(a) Every industrial loan company shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and the board in the same manner and to the same extent as is the case of banking institutions organized under the laws of this state under the provisions of chapter thirty-one-a of this code insofar as the same are applicable thereto. Where forty percent or more of the common stock of any industrial loan company is owned or is held in trust for the benefit of or by any other single firm, corporation, partnership or association, such other firm, corporation, partnership or association shall also be subject to the same jurisdiction and powers of inspection, examination, supervision and control of the commissioner and of the board in the same manner and to the same extent as if such other firm, corporation, partnership or association were an industrial loan company.

(b) The commissioner of banking shall charge and collect from each industrial loan company and pay into a special revenue account for the department of banking an annual assessment payable on the first day of July, computed upon the total assets of the industrial loan company shown on the report of condition of the industrial loan company as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

(c) Every industrial bank shall be subject to the inspection, examination, assessment, supervision, jurisdiction and control of the commissioner and of the board in the manner provided in chapter thirty-one-a of this code and to the same extent as is the case of other banking institutions organized under the laws of this state and in addition, shall be subject to all of the provisions, regulations and requirements of the federal deposit insurance corporation including the right of inspection, exami-
ARTICLE 10. CREDIT UNIONS.

§31-10-6. Supervision by and reports to commissioner of banking; examinations; assessment; penalty for failure to report; revocation of certificates of approval.

(a) Credit unions shall be under the supervision of the commissioner of banking. They shall report to him at least semi-annually on or before the first day of January and the first day of July of each calendar year, on blanks supplied by the said commissioner for that purpose. Additional reports may be required by said commissioner. Credit unions shall be examined annually by the commissioner of banking, except that, if a credit union has assets of less than twenty-five thousand dollars, he may accept the audit of a certified public accountant in place of such examination.

(b) The commissioner of banking shall charge and collect from each credit union and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the first day of July computed upon the total assets of the credit union shown on the report of condition of the credit union as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

(c) For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state five dollars for each day of its delinquency. If the commissioner of banking determines that a credit union is violating any provision of this article, or is insolvent, said commissioner may serve notice on such credit union of his intention to revoke the certificate of approval. If, for a period of fifteen days after such notice, such violation continues, the commissioner of banking may revoke such certificate and take possession of the business and property of such credit union and maintain possession until such time as he shall permit it to continue business or its affairs are finally liquidated. He may take similar action if such report remains in arrears for more than fifteen days.
ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "Commissioner's Assessment and Examination Fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the department of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, after the first day of July, one thousand nine hundred eighty-three, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the department of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the state treasury for the department of banking assessments as follows:

(1) For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding thirtieth day of June and thirty-first day of December respectively as follows:
### Total Assets

<table>
<thead>
<tr>
<th>Over Million</th>
<th>But Not Over Million</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 $0</td>
<td>$1</td>
<td>$0</td>
<td>.001000</td>
<td>0</td>
</tr>
<tr>
<td>31</td>
<td>10</td>
<td>1,000</td>
<td>.000125</td>
<td>1</td>
</tr>
<tr>
<td>32</td>
<td>50</td>
<td>2,125</td>
<td>.000095</td>
<td>10</td>
</tr>
<tr>
<td>33</td>
<td>100</td>
<td>5,925</td>
<td>.000060</td>
<td>50</td>
</tr>
<tr>
<td>34</td>
<td>500</td>
<td>8,925</td>
<td>.000050</td>
<td>100</td>
</tr>
<tr>
<td>35</td>
<td>1,000</td>
<td>28.925</td>
<td>.000045</td>
<td>500</td>
</tr>
</tbody>
</table>

(2) For each industrial loan company an annual assessment as provided for in section thirteen, article seven, chapter thirty-one of this code, as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>39 $0</td>
<td>$1,000,000</td>
<td>800</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>40 1,000,000</td>
<td>5,000,000</td>
<td>800</td>
<td>.000400</td>
<td>1,000,000</td>
</tr>
<tr>
<td>41 5,000,000</td>
<td>10,000,000</td>
<td>2,400</td>
<td>.000200</td>
<td>5,000,000</td>
</tr>
<tr>
<td>42 10,000,000</td>
<td>—</td>
<td>4,200</td>
<td>.000100</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

If an industrial loan company’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section six, article ten, chapter thirty-one of this code as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 $0</td>
<td>$100,000</td>
<td>100</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>51 100,000</td>
<td>500,000</td>
<td>300</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>52 500,000</td>
<td>1,000,000</td>
<td>500</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>53 1,000,000</td>
<td>5,000,000</td>
<td>500</td>
<td>.000400</td>
<td>1,000,000</td>
</tr>
<tr>
<td>54 5,000,000</td>
<td>10,000,000</td>
<td>2,100</td>
<td>.000200</td>
<td>5,000,000</td>
</tr>
<tr>
<td>55 10,000,000</td>
<td>—</td>
<td>3,100</td>
<td>.000100</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>
(4) For each bank holding company, an annual assessment shall be made as provided for in section five, article eight-a, chapter thirty-one-a of this code. Such annual assessment shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(5) For each supervised lender, an annual assessment as provided for in section one hundred five, article four, chapter forty-six-a of this code. Such annual assessment shall not exceed one hundred dollars on the first twenty-five thousand dollars of total outstanding loan balances and installment sales contract balances less unearned finance charges plus forty cents per thousand dollars on the remaining outstanding balances as of the preceding calendar year-end.

(6) The commissioner shall, during the month of June, one thousand nine hundred eighty-three, and each December and each June thereafter, prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, during the month of June, one thousand nine hundred eighty-three, and each June thereafter, prepare and send to each industrial loan company, each state credit union and each supervised lender a statement of the amount of the assessment due. Such assessments shall be charged for the first day of July, one thousand nine hundred eighty-three, at the amounts as scheduled. The commissioner shall, further, during the month of January, one thousand nine hundred eighty-four, and each January thereafter, prepare and send to each bank holding company a statement of the amount of the assessment due. Such bank holding company assessments shall be charged for the last day of January, one thousand nine hundred eighty-four, at the amounts as scheduled in this subsection.

Subsequent assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in this subsection. In setting such assessments the primary consideration shall be the amount appropriated by the Legislature for the department of banking for the corresponding annual period. Reasonable notice of such assessments shall be made to all interested parties. All orders of the commissioner for
the purpose of setting assessments shall not be subject to the provisions of the West Virginia Administrative Procedures Act, chapter twenty-nine-a of this code.

(c) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the department of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(d) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(e) The commissioner of banking may maintain an action for the recovery of all such assessments, costs and expenses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-5. Requirements and procedure for incorporation of state banks.

A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the state of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, “bank,” “banking company,” “banking association,” “trust company,” “banking and trust company” or “bank and trust company.”

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the secretary of state for chartering corporations under provisions of article one, chapter thirty-one of this
The information set forth in the agreement shall include the following:

(1) The name of the proposed bank;

(2) The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;

(3) Whether such bank proposes also to engage in the trust business;

(4) The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;

(5) The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and

(6) The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of two thousand five hundred dollars payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize a banking institution in this state.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

(a) For the purposes of this section, other than subsection (f), a "bank holding company" shall include, in addition to a bank holding company defined in subdivision (1), sub-
section (a), section three of this article, any other bank
holding company subject to regulation under Title 12 United
States Code, §§1841-1850 (being the act of Congress entitled
the Bank Holding Company Act of 1956, as amended),
which has acquired or established a place of business in this
state or a subsidiary which has a place of business in this
state.

(b) On the first day of July, one thousand nine hundred
eighty-two, and annually thereafter on dates established by
the commissioner, each bank holding company shall register
with the commissioner on forms provided or prescribed by
him, which shall include such information with respect to
the financial condition, operation, management and inter-
company relationships of the bank holding company and its
subsidiaries and related matters as the commissioner may
deem necessary or appropriate to carry out the purposes of
this article.

(c) The commissioner is authorized to issue such regula-
tions and orders as may be necessary to enable him or
the board to administer and carry out the purposes of this
article and prevent evasions thereof.

(d) The commissioner from time to time may require
reports under oath to keep him informed as to whether the
provisions of this article and such regulations and orders
thereunder issued by him have been complied with, may make
examinations of each bank holding company and each sub-
sidiary thereof, and shall, as far as possible, use the reports
of examination made by the comptroller of the currency,
federal deposit insurance corporation, or the board of govern-
ors of the federal reserve system for the purposes of this
section.

(e) Bank holding companies and subsidiaries or affiliates
thereof shall be regulated, controlled and examined by the
commissioner to the same extent that he regulates, controls
and examines state banks and other financial institutions under
his jurisdiction. The commissioner is hereby authorized to
promulgate rules and regulations and registration procedures
for the regulation, examination and control of bank holding
companies doing business in this state.

(f) The commissioner of banking shall charge and collect
from each bank holding company and pay into a special
revenue account in the state treasury for the department of
banking an annual assessment payable on the last day of
January computed upon the total deposits of the bank hold-
ing company shown on the consolidated financial statement
as of the last business day in December of the previous
year as is set out in section eight, article two, chapter thirty-
one-a of this code. The payment of such registration fee
shall be accompanied by a report on forms prescribed by the
commissioner.

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

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-105. Examinations; assessments and investigations.

1 (1) The commissioner shall examine annually the loans,
business and records of every licensee. In addition, for the
purpose of discovering violations of this article or securing in-
formation lawfully required, the attorney general or the com-
missioner may at any time investigate the loans, business and
records of any supervised lender. For these purposes he shall
have free and reasonable access to the offices, places of business
and records of the lender.

2 (2) If the lender's records are located outside this state,
the lender at his option shall make them available to the com-
missioner at a convenient location within this state, or pay the
reasonable and necessary expenses for the commissioner or
his representatives to examine them at the place where they
are maintained. The commissioner may designate representa-
tives, including comparable officials of the state in which the
records are located, to inspect them on his behalf.

3 (3) For the purposes of this section, the commissioner may
administer oaths or affirmations, and upon his own motion or
upon request of any party, may subpoena witnesses, compel
their attendance, adduce evidence, and require the production
of any matter which is relevant to the investigation, including
the existence, description, nature, custody, condition and loca-
tion of any books, documents or other tangible things and
the identity and location of persons having knowledge of rele-
vant facts, or any other matter reasonably calculated to lead to
the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena
or to give testimony and upon reasonable notice to all persons
affected thereby, the commissioner may apply to any circuit
court of this state for an order compelling compliance.

(5) The commissioner of banking shall charge and collect
from each supervised lender and pay into a special revenue
account in the state treasury for the department of banking an
annual assessment payable on the first day of July computed
upon the total outstanding loan balances and installment sales
contract balances less unearned finance charges as of the pre-
ceding calendar year-end as is set out in section eight, article
two, chapter thirty-one-a of this code.

CHAPTER 47
(Com. Sub. for S. B. 580—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article fourteen-b, relating
to mandatory civil service coverage for certain correctional
officers in certain counties and permissive civil service
coverage for certain correctional officers in other counties
on or after the effective date of said article fourteen-b,
relating to appointment, promotion, reinstatement,
removal, discharge, suspension and reduction of
correctional officers covered by civil service; providing
definitions; relating to population determination; relating
to a county civil service commission for civil service for
correctional officers, the appointment of its members and
the removal of such members; relating to the clerk of and an
office and supplies for any such civil service commission;
requiring appropriations to carry out provisions of said
article; relating to the powers and duties of any such civil
service commission; relating to rules and regulations of any
such civil service commission and notice and distribution of
such rules and regulations; providing for probationary
appointments of correctional officers covered by civil
service; relating to application for competitive examination,
age requirements and exceptions; relating to competitive
and medical examinations for appointment or promotion as
a correctional officer, and notice of competitive
examinations; requiring the state civil service commission to
prepare and prescribe competitive examinations for
correctional officers; specifying circumstances under which
competitive and medical examination shall not be required;
relating to training, examination and age of persons
employed as correctional officers on the effective date of this
article; relating to the refusal to examine or certify and
review of such refusal; relating to eligibility lists from which
appointments are made; specifying procedures for
appointments from an eligibility list and procedures for
objecting to and removing any name from any such list;
relating to filling a vacancy when there is no eligibility list;
relating to filling vacancies by promotion, and eligibility for
promotion; prohibiting any inquiry as to political or
religious opinion or affiliation and prohibiting
discrimination on the basis thereof; prohibiting certain
political activity of correctional officers and authorizing a
petition for vacating an appointment because of political
activity; relating to action on such petition and judicial
review with respect thereto; requiring training and
retraining programs for and satisfactory completion thereof
by correctional officers; relating to the removal, discharge,
suspension or reduction in rank or pay of correctional
officers and judicial review with respect thereto; relating to
reduction in number of correctional officers; specifying that
correctional officers subject to this article may not serve as
correctional officers after attaining age sixty-five; vacations
and sick leave for correctional officers; establishing various
criminal offenses and providing criminal penalties;
establishing procedures for optional civil service coverage of correctional officers; providing a repealer clause; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-1. Appointments and promotions of correctional officers.
§7-14B-2. Definitions; population.
§7-14B-3. Civil service commission.
§7-14B-4. Clerk of commission.
§7-14B-5. Office and supplies for commission; appropriations required.
§7-14B-6. Powers and duties of commission.
§7-14B-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.
§7-14B-8. Form of application; age requirements; exceptions.
§7-14B-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of correctional officers serving on effective date of article.
§7-14B-10. Refusal to examine or certify; review thereof.
§7-14B-11. Appointments from eligible list.
§7-14B-12. Noncompetitive examination for filling vacancy; provisional appointment.
§7-14B-13. Vacancies filled by promotions; eligibility for promotion.
§7-14B-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.
§7-14B-15. Political activity of correctional officers prohibited; petition for vacating appointment; action on petition; appeal.
§7-14B-16. Training and retraining programs for all correctional officers required.
§7-14B-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.
§7-14B-18. Vacations for correctional officers.
§7-14B-20. Offenses and penalties.
§7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto.
§7-14B-22. Inconsistent acts repealed; once established civil service remains mandatory.
§7-14B-23. Severability.
§7-14B-1. Appointments and promotions of correctional officers.

Notwithstanding the provisions of article three, chapter six, and article seven, chapter seven of this code, all appointments and promotions of full-time correctional officers, as defined in section two of this article, in the offices of sheriffs of counties of twenty-five thousand population or more, shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. On and after the effective date of this article, no person shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a full-time correctional officer, as defined in said section two, of any county in the state of West Virginia subject to the provisions hereof, in any manner or by any means other than those prescribed in this article.

§7-14B-2. Definitions; population.

(a) For the purpose of this article:

(1) "Appointing officer" or "appointing sheriff" shall mean the sheriff of the county in which the appointment of a correctional officer shall be made pursuant to this article; and

(2) "Correctional officer" shall mean persons appointed by a sheriff whose sole duties as such correctional officer are within the scope of active operation and management of the county jail.

(b) For the purpose of this article, population shall be determined by reference to the last preceding census taken under the authority of the United States or of the Legislature of West Virginia.

§7-14B-3. Civil service commission.

There shall be a civil service commission in each county having a population of twenty-five thousand or more. Each such civil service commission shall consist of five commissioners, two of whom shall be appointed by the bar association of such county, one of whom shall be appointed by the correctional officer association of such county, and two of whom shall be appointed by the county commission
of such county. In the event the bar association or correctional officer association shall fail to make an appointment within the time prescribed in this section therefor, then such appointment shall be made by the county commission. The persons appointed commissioners shall be qualified voters of the county for which they are appointed, and at least three of the commissioners shall be persons in full sympathy with the purposes of this article. Not more than three of the commissioners, at any one time, shall be members of the same political party. The commissioners in each county shall be appointed as follows: Within sixty days from the effective date of this article, the authorities having the power to appoint members to the civil service commission shall appoint the five commissioners, the first two to be appointed by the bar association of the county shall serve for six years from the date of his appointment, the one to be appointed by the correctional officer association of the county shall serve for four years from the date of his appointment, and the two to be appointed by the county commission of the county shall serve for a term of two years from the date of his appointment. All subsequent appointments shall be made for terms of six years. In the event that any commissioner of the civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of that commissioner within ten days after said ex-commissioner shall have ceased to be a member of the commission. Such appointment shall be made by the authority who appointed the commissioner who is no longer a member of the commission. Each year the members of the commission shall, together, elect one of their number to act as president of the commission for a term of one year. The county commission may at any time remove a commissioner for good cause, which shall be stated in writing and made a part of the records of the commission: Provided, That once the county commission has removed any commissioner, such county commission shall within ten days thereafter file in the office of the clerk of the circuit court of the county a petition setting forth in full the reason for the removal and praying for the confirmation of the circuit court of the action of the county commission in removing the said
commissioner. A copy of the petition shall be served upon
the commissioner so removed simultaneously with its filing
in the office of the clerk of the circuit court and shall have
precedence on the docket of the circuit court and shall be
heard by the court as soon as practicable upon the request of
the removed commissioner. All rights hereby vested in the
circuit court may be exercised by the judge thereof in
vacation. In the event that no term of the circuit court is
being held at the time of the filing of the petition, and the
judge thereof cannot be reached in the county wherein the
petition was filed, the petition shall be heard at the next
succeeding term of the circuit court, whether regular or
special, and the commissioner so removed shall remain
removed until a hearing is had upon the petition of the
county commission. The circuit court, or the judge thereof
in vacation, shall hear and decide the issues presented by
the petition. The county commission or commissioner, as
the case may be, against whom the decision of the circuit
court or judge thereof in vacation shall be rendered shall
have the right to petition the supreme court of appeals for a
review of the decision of the circuit court or the judge
thereof in vacation as in other civil cases. In the event that
the county commission shall fail to file its petition in the
office of the clerk of the circuit court, as hereinbefore
provided, within ten days after the removal of the
commissioner, such commissioner shall immediately
resume his position as a member of the civil service
commission.

Any resident of the county shall have the right at any time
to file charges against and seek the removal of any member
of the civil service commission. The charges shall be filed in
the form of a petition in the office of the clerk of the circuit
court of the county. A copy of the petition shall be served
upon the commissioner sought to be removed. The petition
shall be matured for hearing and heard as a civil action by
the circuit court of the county for which the commissioner
serves as a member of the civil service commission or by the
judge thereof in vacation. The party against whom the
decision of the circuit court or judge thereof in vacation
shall be rendered shall have the right to petition the
supreme court of appeals for a review of the decision of the
91 circuit court or judge thereof in vacation as in other civil cases.
92 No commissioner shall hold any other office (other than
93 the office of notary public) under the United States, this
94 state, or any municipality, county or other political
95 subdivision thereof, nor shall any commissioner serve on
96 any political party committee or take any active part in the
97 management of any political campaign.

§7-14B-4. Clerk of commission.
1 The clerk of the county commission shall be ex officio
2 clerk of the civil service commission and shall supply to the
3 commission all necessary clerical and stenographic services
4 for the work of the civil service commission.

§7-14B-5. Office and supplies for commission; appropriations required.
1 It shall be the duty of the county commission of every such
2 county to cause suitable and convenient rooms and
3 accommodations to be assigned and provided, furnished,
4 heated and lighted for carrying on the work and
5 examinations of the civil service commission. The civil
6 service commission may order from the proper authorities
7 the necessary stationery, postage stamps, official seal and
8 other articles to be supplied, and the necessary printing to
9 be done, for its official use. It shall be the duty of the county
10 commission and other county officials of every such county
11 to aid the civil service commission in all proper ways in
12 carrying out the provisions of this article, and to allow the
13 reasonable use of public buildings, and to heat and light the
14 same, for holding examinations and investigations and in
15 all proper ways to facilitate the same.
16 The county commission of each such county is hereby
17 required to appropriate sufficient funds for the purpose of
18 carrying out the provisions of this article.

§7-14B-6. Powers and duties of commission.
1 The civil service commission in each such county shall:
2 (1) Promulgate and enforce rules and regulations for
3 carrying into effect the provisions of this article. All rules
4 and regulations so prescribed may, from time to time, be
5 added to, amended or rescinded.
(2) Keep minutes of its own proceedings and records of its examinations and other official actions. All recommendations of applicants for the position of correctional officer received by the commission or by the sheriff shall be kept and preserved for a period of ten years, and all such records, recommendations of former employees excepted, and all written causes of removal, filed with the commission, shall, subject to reasonable rule and regulation, be open to public inspection.

(3) Make investigations, either sitting as a body or through a single commissioner, concerning all matters touching the enforcement and effect of the provisions of this article and the rules and regulations promulgated hereunder or concerning the action of any examiner or subordinate of the commission or any person in the public service with respect to the execution of this article; and, in the course of such investigations, each commissioner shall have the power to administer oaths and affirmations and to take testimony.

(4) Have power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigations and inquiries herein authorized, and examine them and such public records as it shall require in relation to any matter which it has the authority to investigate. The fee of such witness for attendance and travel shall be the same as for witnesses before the circuit courts of this state and shall be paid from the appropriation for the incidental expenses of the commission. All officers in the public service and their deputies, clerks, subordinates and employees shall attend and testify when required to do so by the commission. Any disobedience to, or neglect of, any subpoena issued by the commissioners, or any one of them, to any person, shall be held a contempt of court, and shall be punished by the circuit court of the county in which the civil service commission is located, or the judge thereof in vacation, as if such subpoena has been issued by the court. The judge of the circuit court shall, upon the application of any one commissioner, in any such case, cause the process of that court to issue to compel any person or persons disobeying or neglecting any such subpoena to appear and to give
testimony and produce evidence before the commissioner, or any one of them, and shall have power to punish any such contempt.

(5) Prepare a position classification and promotion plan.

(6) Make an annual report to the county commission and sheriff showing its own actions, its rules and regulations, including all exceptions thereto in force, and the practical effects thereof, and any suggestions it may have for the more effectual accomplishment of the purposes of this article. Such report shall be available for public inspection five days after it shall have been delivered to the county commission and sheriff.

§7-14B-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.

The civil service commission in each such county shall promulgate rules and regulations providing for both competitive and medical examinations for the position of correctional officer in each such county subject to the provisions of this article, for appointments to the position of correctional officer and for promotions and for such other matters as are necessary to carry out the purposes of this article. Any such commission shall have the power and authority to require by rules and regulations a physical fitness examination as part of its competitive examination or as a part of its medical examination. Due notice of the contents of all 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 on and after the effective date of this article, to any position of correctional officer in any county subject to the 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 seventeen of this article. If, at the close of this probationary period, the conduct or capacity of the probationer has not been satisfactory to the appointing sheriff, the probationer shall be notified, in writing, that he...
will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the position of correctional officer beyond the probationary term shall be equivalent to his absolute appointment.

§7-14B-8. Form of application; age requirements; exceptions.

The civil service commission in each such county shall require persons applying for admission to any competitive examination provided for under this article or under the rules and regulations of the commission to file in its office, within a reasonable time prior to the proposed competitive examination a formal application in which the applicant shall state under oath or affirmation:

(1) His full name, residence and post-office address;

(2) His United States citizenship, age and the place and date of his birth;

(3) His health and his physical capacity for the position of correctional officer;

(4) His business, employments and residences for at least three previous years; and

(5) Such other information as may reasonably be required, relative to the applicant's qualifications and fitness for the position of correctional officer.

Blank forms for such applications shall be furnished by the commission, without charge, to all persons requesting the same. The commission may require, in connection with the application, such certificates of citizens, physicians or others, having pertinent knowledge concerning the applicant, as the good of the service may require.

No application for original appointment shall be received on and after the effective date of this article, if the person applying is less than eighteen years of age or more than forty-five years of age at the date of his application: Provided, That in the event any applicant formerly served as a correctional officer for a period of more than one year in the county to which he makes application, and resigned as a correctional officer at a time when there were no charges of misconduct or other misfeasance pending against him, within a period of two years preceding the date of his
application, and at the time of his application resides within the county in which he seeks appointment by reinstatement, then such applicant shall be eligible for appointment by reinstatement in the discretion of the civil service commission, even though such applicant shall be over the age of forty-five years, provided he is not sixty-five years of age or over, and such applicant, providing his former term of service as a correctional officer so justifies, may be reappointed by reinstatement without a competitive examination, but such applicant shall undergo a medical examination; and if such applicant shall be so appointed by reinstatement as aforesaid, he shall be the lowest in rank in the jail next above the probationers of the office.

§7-14B-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of correctional officers serving on effective date of article.

All competitive examinations for appointments or promotions to all positions of correctional officer shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the person or persons examined to discharge the duties of the position sought by him or them. The state civil service commission shall prepare and prescribe, from time to time, the competitive examination to be given by the civil service commission of each such county. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in other sections of this article.

Adequate public notice of the date, time and place of every competitive examination held under the provisions of this article, together with information as to the position to be filled, shall be given at least two weeks prior to such competitive examination. The civil service commission in each county shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examinations. Such commission shall post, in a public place at its office, the eligible list,
containing the names and grades of those who have passed such competitive examinations for positions as correctional officer, under this article, and shall indicate thereon such appointments as may be made from said list.

All applicants for appointment or promotion to any position as a correctional officer in any such county who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the sheriff of the county. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

All correctional officers who are employed as correctional officers on the effective date of this article, shall be considered to have been appointed under the provisions of this article without regard to their age, and without competitive examination or medical examination, and shall hold their positions in accordance therewith for one year from the effective date of this article. The civil service commission shall, however, establish or prescribe a training program for correctional officers who are employed as such on the effective date of this article, giving due consideration to available training personnel and programs. Such correctional officers shall complete a two-hundred-hour basic correctional officer's training course as certified by the West Virginia department of corrections within a twelve-month period following appointment.

However, persons who have (1) completed a basic correctional officers training course or equivalent within the past three years prior to appointment or (2) who have been employed as a correctional officer in a jail for three
years out of the last five years prior to appointment may be certified as correctional officers without basic training if in the judgment of the commission such persons are otherwise qualified. A correctional officer failing to qualify under the provisions of this paragraph may be continued in his position at the discretion of the sheriff but in no event for a period of more than one year. Such person may be reexamined at the discretion of the civil service commission of the county and may qualify as provided in this paragraph.

§7-14B-10. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant, or after examination to certify as eligible one, who is found to lack any of the established preliminary requirements for the examination or position of correctional officer for which he applies; or who is physically so disabled as to be rendered unfit for the performance of the duties of the position of correctional officer desired; or who is addicted to the habitual use of intoxicating liquors or drugs; or who has been convicted of a felony; or who has been guilty of infamous or notoriously disgraceful conduct; or who has been dismissed from public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to practice any deception or fraud in his application, in any such examination, or in securing his eligibility; or who refuses to comply with the rules and regulations of the commission.

If any applicant feels aggrieved by the action of the commission in refusing to examine him, or after examination in refusing to certify him as eligible, the commission shall, at the request of such applicant, appoint a date, time and place for a public hearing, at which time the applicant may appear, by himself or by counsel or in person and with counsel, and the commission shall then review its refusal to make such examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by him. After such review, the commission shall file in its records the testimony taken and shall make a decision, which decision shall be final and not subject to judicial review, but under no circumstances shall the
provisions of this article be construed, in the case of a refusal to examine an applicant for promotion or to certify an applicant as eligible for promotion, as depriving such applicant of his right to seek a writ of mandamus, if the application for such writ is made within twenty days from the date of the decision (made after hearing as aforesaid) refusing to examine or to certify him as eligible for promotion.

§7-14B-11. Appointments from eligible list.

On and after the effective date of this article, every position of correctional officer, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing sheriff shall notify the civil service commission of any vacancy in a position of correctional officer which he desires to fill, and shall request the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three persons thereon who received the highest averages at preceding competitive examinations held under the provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing sheriff shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three names so certified: Provided, that should he make objection to the commission to one or more of these persons for any of the reasons stated in section ten of this article, and should such objection be sustained by the commission after a public hearing along the lines of the hearing provided for in said section ten, if any such hearing is requested, the commission shall thereupon strike the name of that person from the eligible list, and certify the next highest name for each person so stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: Provided, however, that after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the foregoing provisions. When an appointment is made under the provisions of this section, it shall be, in the first
instance, for the probationary period of twelve months, as provided in section seven of this article.

§7-14B-12. Noncompetitive examination for filling vacancy; provisional appointment.

Whenever there are urgent reasons for filling a vacancy in any position of correctional officer and there is no list of persons eligible for appointment after a competitive examination, the appointing sheriff may nominate a person to the civil service commission for noncompetitive examination; and if such nominee shall be certified by the commission as qualified, after such noncompetitive examination and a medical examination, he may be appointed provisionally to fill such vacancy until a selection and appointment can be made after competitive examination in the manner prescribed in section eleven of this article; but the provisional appointment shall not continue for a longer period than three months, nor shall successive provisional appointments be made to the same position, under the provisions of this section.

§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions of correctional officer on and after the effective date of this article, shall be filled, so far as practicable by promotion from among persons holding positions in the next lower grade. Promotions shall be based upon merit and fitness to be ascertained by competitive examinations to be provided by the civil service commission and upon the superior qualifications of the persons promoted, as shown by their previous service and experience: Provided, That no person shall be eligible for promotion from the lower grade to the next higher grade until such person shall have completed at least two years' service in the next lower grade.

§7-14B-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.

No question in any form of application or in or during any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant; nor shall inquiry be made concerning such
opinions or affiliations; and all disclosures thereof shall be
discountenanced. No discrimination shall be exercised,
threatened, or promised by any person in the sheriff's office
against, or in favor of, an applicant, eligible or correctional
officer in the office of any sheriff of any county subject to
the provisions of this article because of his political or
religious opinions or affiliations.

§7-14B-15. Political activity of correctional officers
prohibited; petition for vacating appointment;
action on petition; appeal.

(a) On and after the effective date of this article, no
correctional officer covered by the provisions of this article
shall engage in any political activity of any kind, character
or nature whatsoever, except to cast his vote at any election
or shall act as an election official in any municipal, county
or state election. Any correctional officer violating the
provisions of this section shall have his appointment
vacated and he shall be removed, in accordance with the
pertinent provisions of this section.

(b) Any three residents of the county may file their
written petition with the civil service commission thereof
setting out therein the grounds upon which a correctional
officer of such county should be removed for a violation of
subsection (a) of this section. Notice of the filing of such
petition shall be given by the commission to the accused
correctional officer, which notice shall require him to file a
written answer to the charges set out in the petition within
thirty days of the date of such notice. The petition and
answer thereto, if any, shall be entered upon the records of
the civil service commission. If the answer is not filed
within the time stated, or any extension thereof for cause
which in the discretion of the civil service commission may
be granted, an order shall be entered by the commission
declaring the appointment of the correctional officer
vacated. If such answer is filed within the time stated, or
any extension thereof for cause which in the discretion of
the civil service commission may be granted, the accused
correctional officer may demand within such period a
public hearing on the charges, or the civil service
commission may, in its discretion and without demand
therefor, set a date and time for a public hearing on the
charges which hearing shall be within thirty days of the
filing of said answer, subject, however, to any continuances
which may in the discretion of the civil service commission
be granted. 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. The commission at the conclusion of the
hearing, or as soon thereafter as possible, shall enter an
order sustaining in whole or in part the charges made, or
shall dismiss the charges as unfounded. In the event the
charges are sustained in whole or in part, the order shall
also declare the appointment of such correctional officer to
be vacated and thereupon the sheriff shall immediately
remove the correctional officer from his office and from the
payroll of the county. Notice of the action of the commission
shall be given by registered letter to the county commission
and the sheriff. If the sheriff fails to immediately comply
with the order of the commission, he shall be punished for
contempt, upon application of the commission to the circuit
court of the county.

(c) An appeal from the ruling of the commission may be
had in the same manner and within the same time as
specified in section seventeen of this article for an appeal
from a ruling of a commission after hearing held in
accordance with the provisions of said section seventeen.

§7-14B-16. Training and retraining programs for all
correctional officers required.

(a) The civil service commission of any such county shall
establish or prescribe a training program which every
correctional officer first appointed a correctional officer of
such county on or after the effective date of this article,
must satisfactorily complete during his probationary
period.

(b) The civil service commission of any such county
shall also establish or prescribe annual retraining programs
of at least forty hours which every correctional officer,
whether first appointed such correctional officer before or
after the effective date of this article, must satisfactorily
complete from time to time after the effective date of this
article, in order to continue as a correctional officer of such county or to be eligible for promotion.

§7-14B-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.

(a) On and after the effective date of this article, no correctional officer of any county 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 correctional officer 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. 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 correctional officer 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 correctional officer 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 correctional officer 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 correctional officer, 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 correctional
officer 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
correctional officer 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 correctional
officer 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 correctional officer or removing sheriff shall also have
the right, where appropriate, to seek in lieu of an appeal, a
writ of mandamus. The correctional officer, 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 correctional officer
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 correctional officers, he shall follow the procedure set forth in this subsection. The reduction in the numbers of the correctional officers of the county shall be effected by suspending the last man or men, including probationers, who have been appointed as correctional officers: Provided, That in the event the number of correctional officers shall again be increased in numbers to the strength existing prior to such reduction of correctional officers, the correctional officers suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments of correctional officers in the county shall be made.

(e) Notwithstanding any other provision of this article, no correctional officer in any county subject to the provisions of this article shall, on or after the effective date of this article, serve as a correctional officer in any county subject to the provisions of this article after he attains the age of sixty-five.

§7-14B-18. Vacations for correctional officers.

The county commission of each county shall allow the correctional officer in its employ vacation time accrued in the following manner: For correctional officers with less than five years of service, vacation time shall be accrued at the rate of one and one-quarter days for each calendar month of service; for correctional officers with five to ten years of service, vacation time shall be accrued at the rate of one and one-half days for each calendar month of service; for correctional officers with ten to fifteen years of service, vacation time shall be accrued at the rate of one and three-quarters days for each calendar month of service; and for correctional officers with fifteen or more years of service, vacation time shall be accrued at the rate of two days for each calendar month of service.

Each correctional officer shall only receive vacation time for each month in which he shall have worked one hour
17 more than one half the normal working hours in a given
18 month as prescribed by the sheriff.
19 Accrued vacation time may be carried forward from one
20 calendar year to the next, in accordance with county policy.


1 (a) The county commission of each county shall allow
2 the correctional officer sick leave with pay to be computed
3 as follows: Correctional officers shall be entitled to one and
4 one-half days sick leave for each calendar month worked, or
5 greater part thereof.
6 (b) Sick leave shall be granted only when illness on the
7 part of or injury to the correctional officer incapacitates
8 him for duty: Provided, That the sheriff of the county in
9 which the correctional officer is employed shall have the
10 authority to require the correctional officer to produce a
11 statement from an attending physician for each day of sick
12 leave beyond two days. This statement shall include dates of
13 treatment and also state that the correctional officer was
14 unable to work. In the absence of the required physician's
15 statement, annual leave shall be charged for the entire
16 period.
17 (c) Correctional officers may accumulate yearly sick
18 leave in accordance with policy to be established by the
19 county commission.
20 (d) In the event of illness, a correctional officer may take
21 emergency sick leave without pay after all accrued sick
22 leave, annual leave and compensatory time available to
23 such full-time correctional officer has been exhausted:
24 Provided, That the total number of days sick leave and
25 emergency sick leave used during such illness shall not
26 exceed the total number of days of sick leave which may be
27 accumulated under the provisions of subsection (c) of this
28 section by any correctional officer with the same number of
29 years of service.

§7-14B-20. Offenses and penalties.

1 Any person who makes an appointment or promotion to
2 any position, or selects a person for employment, contrary
3 to the provisions of this article, or willfully refuses or
4 neglects otherwise to comply with, or to conform to, any of
the provisions of this article, or violates any of such provisions, shall be deemed guilty of a misdemeanor.

Any commissioner or examiner, or any other person, who shall willfully, by himself or in cooperation with one or more persons, defeat, deceive or obstruct any person with respect to his right of examination or registration according to this article, or to any rules and regulations promulgated pursuant thereto, or who shall willfully or corruptly, falsely mark, grade, estimate or report upon such examination or proper standing of any person so examined, registered, or certified, pursuant to the provisions of this article, or aid in so doing, or who shall willfully or corruptly furnish to any person any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment or promotion to any position of any person so examined, registered or certified, or to be so examined, registered or certified; or who shall impersonate any other person, or permit or aid in any manner any other person to impersonate him, in connection with any examination or registration, or application or request to be examined or registered, shall, for each offense, be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense shall be fined not less than fifty nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned, in the discretion of the court.

§7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto.

The county commission of any county having a population of less than twenty-five thousand may by order entered of record provide that the provisions of this article providing civil service for correctional officers shall apply to such county on and after the effective date of this article. A copy of such order, together with a notice advising the qualified voters of such county of their right to protest the placing of correctional officers of such county under civil service, shall be published 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 shall be the county.

In the event fifteen percent of the qualified voters of such county protest such order, by petition duly signed by them in their own handwriting (which petition may be signed in any number of counterparts) and filed with the county clerk of such county within sixty days after publication of such copy and notice, such order shall not become effective unless and until it is ratified by a majority of the legal votes cast with respect to the question of civil service coverage for the correctional officers of such county by the qualified voters of such county at a regular or special election. Any such election shall be conducted and superintended and the results thereof ascertained as provided by law for regular or special elections, as the case may be.

Whenever the correctional officers of any county are placed under civil service pursuant to the provisions of this section, such civil service system for the correctional officers of such county shall thereupon become mandatory and all of the provisions of this article shall apply to the correctional officers of such county with like effect as if said county had a population of twenty-five thousand or more.

§7-14B-22. Inconsistent acts repealed; once established civil service remains mandatory.

All acts and parts of acts of the Legislature, whether general, special or local, in relation to correctional officers inconsistent with the provisions of this article shall be, and the same are, hereby repealed to the extent of such inconsistency.

Any civil service system for correctional officers in any county with a population of twenty-five thousand or more shall remain mandatory and shall be governed by the provisions of this article even if the population of such county shall at any time decrease below twenty-five thousand.

§7-14B-23. Severability.

If any provision of this article or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other
corrections

provisions or applications of this article, and to this end the
provisions of this article are hereby declared to be
severable.

CHAPTER 48
(H. B. 1635—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article five-c, chapter twenty-eight
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section one-a,
article eleven, chapter sixty-one of said code, all relating to the
closing of the West Virginia state prison for women; disposition
of property; and the incarceration of female felons.

Be it enacted by the Legislature of West Virginia:

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

Chapter

61. Crimes and Their Punishment.

CHAPTER 28. STATE CORRECTIONAL AND
PENAL INSTITUTIONS.

ARTICLE 5C. IMPRISONMENT OF FEMALE FELONS.

§28-5C-1. Closure of West Virginia prison for women.
§28-5C-2. Commitment of female felons.

§28-5C-1. Closure of West Virginia prison for women.

The West Virginia prison for women, a penal institution
exclusively for female prisoners, located at Pence Springs,
Summers County, West Virginia is hereby closed. The title to
all real property at the West Virginia prison for women is
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hereby transferred to and vested in the public land corpora-
tion of West Virginia: Provided, That the public land corpo-
tion shall promptly cause an inventory and an appraisal to be
made of the real property and shall offer said real property
for sale at public auction to be sold for not less than the ap-
praised value, or the land corporation shall lease the real
property upon such terms and conditions as it shall deem
appropriate. The title to all personal property at the West
Virginia prison for women remains vested in the state depart-
ment of corrections.

§28-5C-2. Commitment of female felons.

Any adult female found guilty of committing a felony as
defined in section one, article eleven, chapter sixty-one, who
is not placed on probation in accordance with the provisions
of article twelve, chapter sixty-two, shall be committed to the
custody of the state department of corrections for the dura-
tion of her sentence. The commissioner of the state depart-
ment of corrections shall, as he deems appropriate, either
place female felons in state correctional institutions or contract
with any person, corporation, governmental agency or other
entity for their incarceration and care.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.


Upon conviction of a female for a felony and subsequent
sentence of confinement, the trial court shall sentence her to
the custody of the state department of corrections.

CHAPTER 49

(Com. Sub. for H. B. 1210—By Mr. Doyle)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-i, article one, chapter
seven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section five,
article twelve, chapter eight of said code, relating to the authority of county commissions and municipalities to enter into reciprocal agreements for fire protection and emergency medical services with nonresident governmental entities.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3i. County commission may cooperate with other governmental units.

Any county commission may join together in the exercise of any of its powers, duties and responsibilities, or otherwise cooperate with any other county or counties, municipality or municipalities, the government of this state or of the United States in carrying out any lawful purpose not in conflict with the constitution of West Virginia: Provided, That the county commission of any county sharing a common border with any other state is hereby empowered to enter into reciprocal agreements with governmental subdivisions or agencies of such other state for the protection of people and property from fire and for emergency medical services and for the reciprocal use of county equipment and personnel for such purpose.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by (i) the
constitution of this state, (ii) other provisions of this chapter, (iii) other general law, and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision (1); and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of such public hearing has 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 municipality: Provided, That any such permit so granted, shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to such municipality for its use and benefit;

(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 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
(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 house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or for frequenting same;

(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 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, a waterworks system, an electric 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, 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 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 building, 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 terri-
(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;

(56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for such purpose; and

(57) 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 50

[Com. Sub. for H. B. 1411—By Mr. McKinley and Mr. Kelly]

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]
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 four; and that article twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-b, all to read as follows:

Chapter

7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-4. County commission authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.

(a) In addition to all other powers which county commissions now possess by law, county commissions may adopt the ordinance provided in subsection (b) of this section.

A county commission when adopting this ordinance may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.

(b) The ordinance which county commissions may adopt pursuant to the power granted them under subsection (a) of this section shall be:

Section 1. Definitions.

For purposes of this ordinance:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
“Individual” means any human being regardless of age.

“Obscene” means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

“Person” means any individual, partnership, firm, association, corporation or other legal entity.

“Prepare” means to produce, publish or print.

“Public display” means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 1a. Injunctive relief.

The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the prosecuting attorney or any citizen of the county who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the county of (name of county) for sale or public display, or prepares, sells or makes a public display, or in the county of (name of county) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene mat-
Section 3. Prosecution by presentment or indictment.

No person may be prosecuted for an offense under this ordinance except by indictment or information.

Section 4. Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

Section 5. Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this state or of these United States.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5b. Municipal authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.

(a) Notwithstanding the provisions of section one, article eleven, chapter eight of this code, in addition to all other pow-
ers which municipalities now possess by law, every municipality and the governing body thereof may adopt the ordinance provided in subsection (b) of this section.

A municipality when adopting this ordinance, may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.

(b) The ordinance which municipalities may adopt pursuant to the power granted them under subsection (a) of this section shall be:

Section 1. Definitions.

For purposes of this ordinance:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the purient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
(6) "Prepare" means to produce, publish or print.

(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 1a. Injunctive relief.

The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the attorney for the municipality or a representative thereof or any citizen of the municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the municipality of (name of municipality) for sale or public display, or prepares, sells or makes a public display, or in the municipality of (name of municipality) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned not more than six months or both fined and imprisoned.

Section 3. Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer.
of a corporation which has a proprietary interest in such obscene matter.

Section 4. Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this state or of these United States.

CHAPTER 51

(§ 8. 449—By Mr. Sacco)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employment of counsel by the county commission; counties in which employment is authorized.

Be it enacted by the Legislature of West Virginia:

That section three, article four, 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 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-3. Employment of counsel for civil matters; compensation of counsel.

The county commission of any county shall have authority to employ such legal counsel as it may deem necessary for the purpose of advising such county commission on matters of a civil nature and to conduct any litigation of a civil nature to which the county is a party. The county commission shall also have the authority to fix the compensation of any such counsel so employed, and to pay the same out of the county treasury. Any counsel so employed may be removed at the pleasure of the county commission.
AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to county commissions granting annual and sick leave benefits for all county 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 twenty-one, to read as follows:

ARTICLE 5. FISCAL AFFAIRS.

§7-5-21. Annual and sick leave for county employees.

1 The county commission of any county is hereby authorized to grant county employees annual and sick leave benefits.

CHAPTER 53

(Com. Sub. for S. B. 397—By Mr. Burdette)

[Passed February 18, 1983; in effect ninety days from passage. Approved by the Governor.]
be amended by adding thereto a new section, designated section two-a, to read as follows:

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-2a. Authority to lease property for educational instruction in fire prevention and protection.

In addition to the powers and duties set forth in this article, any county parks and recreation commission organized pursuant to the provision of this article is hereby empowered and authorized: (1) To sell and convey any real estate owned by it which is not contiguous to any tract of land which forms a part of a park owned or operated by the commission: Provided, That such real estate shall be sold at public auction for a fair and adequate consideration. The public auction shall be held at a place designated by the commission, but before making any such sale, notices of the time, terms and place of sale, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code of West Virginia, and the publication area for such publication shall be the county wherein the commission is located,

And,

(2) To lease any of its real estate or any part thereof or any of its personal property or any part thereof or any interest in any of the foregoing to any governmental entity or nonprofit corporation for the purpose of establishing a fire prevention and protection or fire-fighting school or educational institution. Every such lease shall be for a term not to exceed forty years and shall be authorized by a resolution of the commission, which resolution shall specify the terms and conditions to be contained in such lease: Provided, That before any such resolution is adopted, a public hearing on such proposed lease shall be held by the commission after notice of the date, time, place and purpose of such public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-
AN ACT to amend and reenact section twenty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the publication of the reports of the supreme court of appeals; the duties of the attorney general as official reporter with respect thereto; and providing for procedures for corrections and modifications to be made with respect to the proof sheets preparatory to the publication of such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-27. Publication of reports of supreme court of appeals.

Notwithstanding any of the provisions of this article, the official reporter of the supreme court of appeals shall have charge and supervision of the printing and binding of the reports of the decisions of the supreme court of appeals of the state, and shall contract for their publication in the same manner that the director of the purchasing division contracts under sections eleven through twenty-one of this article. Such contract shall provide for the publication of such number of copies as the reporter and the supreme court of appeals may jointly direct. If the reporter and the supreme court of appeals do not agree on the number of copies for which the publication contract shall provide, the contract shall provide for the publication
of the greater number of copies directed by either the reporter
or the supreme court of appeals. In no event shall the number of
copies published exceed one thousand five hundred. Copies of
the reports of the decisions of the supreme court of appeals
shall be on such paper and be bound in accordance with
directions and specifications specified by the reporter by and
with the concurrence of the court. The size of type and page
shall be prescribed by the reporter with the concurrence of
the court. A volume shall be published according to the terms
of the contract whenever ordered by the court. The reporter
shall secure the copyright of each volume for the benefit
of the state. The reports shall be styled "West Virginia
Reports."

The printing and binding of the reports shall be done under
the direction of and in the manner prescribed by the re-
porter, subject to the control of the court. The reporter shall
prefix to the printed report of each case the dates when
the same was submitted and decided. Each volume shall, if
practicable, contain the reports of at least eighty cases decided
by the court, and shall contain approximately one thousand
pages unless otherwise ordered by the court, exclusive of the
index and table of cases reported and cited. Galley sheets or
proof sheets shall be furnished by the printer to the reporter
in such number as may be required by the reporter for the pur-
poses of this section. It shall be the duty of the reporter to
proof such galley sheets or proof sheets against the various
cases, including the court's syllabi, as such cases and the
court's syllabi appear in the most recent bound volume of the
appropriate regional reporter in which such cases are reported.
Neither galley sheets nor proof sheets need be submitted to the
court or the clerk thereof for any purpose. Thereafter the re-
porter shall make such corrections and modifications as he
shall deem appropriate and all such corrections and modifica-
tions shall be made by the printer as the reporter may direct.
If the work is not done in the manner required by law, the
reporter shall not approve the volume and shall not accept it.

The reports of the decisions of the supreme court of appeals
may be published in pamphlet form in advance of the publica-
tion of the bound volumes of the "West Virginia Reports,"
periodically, or at such times as may be directed by the reporter and the supreme court of appeals. The reporter shall secure the copyright of each pamphlet of opinions so published in advance. Each pamphlet shall contain the report of such number of cases as the supreme court of appeals and the reporter shall deem advisable.

The contract for the publication of such advance sheets shall be made in the manner provided for the publication of bound volumes of the “West Virginia Reports.”

A charge of not less than the actual cost of printing and distribution shall be made for such advance sheets.

CHAPTER 55
(H. B. 1317—By Mr. Damron, 15th Dist., and Mr. Chambers)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-h, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto four new sections, designated sections thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, relating to crimes against property generally; obtaining property in return for worthless checks; making and issuing worthless checks; providing for the payment of costs in worthless check cases; creating a fund designated the “Worthless Check Fund”; describing the disposition of costs paid into said fund; providing for the preparation of a list of worthless check warrants; establishing a procedure for the use of worthless check lists upon receipt of a complaint for warrant; setting forth a form for a notice of multiple worthless check warrants; describing the duties of the prosecuting attorney upon receipt of said notices; requiring the magistrate court clerk to advise the complainant of the prosecuting attorney's recommendation; requiring checks on consumer deposit accounts to show the date the account was opened; defining the term consumer deposit account and
authorizing and empowering the commissioner of banking to order compliance.

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; and that said article three be further amended by adding thereto four new sections, designated sections thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

§61-3-39i. Preparation of list of worthless check warrants.

§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.

§61-3-39k. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.

§61-3-39l. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

§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 not be paid into the special county fund created by the provisions of section four, article three, chapter fifty of this code, but shall be accounted for separately and retained by the county in a fund designated the "worthless check fund," until the sheriff shall issue warrants in furtherance of the allowable expenses specifically provided for by this section. Such costs shall not
be included in any calculation of the amount of funds to be retained by the county under the provisions of section four, article three, chapter fifty of this code.

A county may, after agreement with the court administrator's office of the supreme court of appeals, appropriate and spend from the worthless check fund herein established such sums as shall be necessary to pay or defray the expenses of providing a deputy sheriff to serve warrants for worthless check offenses and to pay or defray the expenses of providing additional deputy clerks in the office of the magistrate court clerk to process cases involving worthless checks: Provided, That sums agreed to be appropriated for such deputy sheriffs or deputy clerks shall be proportionate to the time such employees devote to worthless check cases. After payment of such expenses, or after a determination that such services are not necessary, 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 to defray the cost of complying with section thirty-nine-i herein and to defray the expenses of such other services which are to be provided to magistrate courts by the county.

§61-3-39i. Preparation of list of worthless check warrants.

Beginning on the first day of July, one thousand nine hundred eighty-three, the magistrate court clerk of every county shall, between the first and fifth day of each month thereafter, prepare a cumulative list of all check warrants issued by the magistrates of the county during the preceding twelve calendar months and after the effective date of this section: Provided, That upon completion of each cumulative list, the list which was completed for the next preceding month and any copy thereof shall be destroyed by the magistrate court clerk. The persons charged in such warrants shall be listed alphabetically. Such list shall also contain the total number of warrants issued against each named person for the period covered by the report, the number assigned to each warrant, and the date each such warrant was issued. A copy of such cumulative list of worthless check warrants shall be forthwith forwarded to each
magistrate in the county and to the prosecuting attorney thereof. Upon the request of magistrates or prosecutors in other counties of this state, such lists shall be regularly forwarded to them.

§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.

On and after the first day of July, one thousand nine hundred eighty-three, when a complaint for worthless check warrant is received by a magistrate court, the person receiving the complaint shall consult the current list of worthless check warrants for the county and any current lists of other counties in his possession to determine whether the defendant named in the complaint for warrant is also named on the list or lists as a person who has had worthless check warrants issued against him during the period covered by the lists. If the list or lists consulted indicate that the person named in the complaint has had not more than one worthless check warrant issued against him within the time period covered by the lists, the person receiving the complaint for warrant shall proceed to have a warrant issued or a notice served, as may be appropriate, in accordance with the provisions of section thirty-nine-g of this article. If the list or lists consulted indicate that the person named in the complaint has had two or more worthless check warrants issued against him within the time period covered by the lists, the person receiving the complaint for warrant shall not cause a warrant to be issued, but shall instead forthwith prepare a "Notice of Multiple Worthless Check Warrants," which shall be in a form substantially as follows:

"NOTICE OF MULTIPLE WORTHLESS CHECK WARRANTS

THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDIVIDUAL HAS HAD TWO OR MORE WORTHLESS CHECK WARRANTS ISSUED IN THE PRECEDING TWELVE MONTHS

To: Prosecuting Attorney of __________________________ County

From: Magistrate Court of __________________________ County

This is to notify you that __________________________
who resides at ____________________________________________________________
has issued worthless checks during the preceding twelve months
for which warrants have been issued.

In accordance with the provisions of section thirty-nine-i, article three, chapter sixty-one of the code of West Virginia
you have ten days to advise this court on how to proceed in
this matter."

A list of the worthless check warrants shall be attached to
said notice, along with information concerning the check which
is the subject of the pending complaint for worthless check
warrant. Warrant numbers, check numbers, dates of checks,
amounts of checks, payees, and drawee financial institutions
for the checks listed shall be set forth.

Immediately upon preparation of the said notice, a copy
thereof shall be forwarded to the prosecuting attorney of each
county upon whose list of worthless check warrants the de-
fendant’s name appears.

§61-3-39k. Duties of prosecuting attorney upon receipt of notice of
multiple worthless check warrants; magistrate court
clerk to advise complainant.

(a) Within ten days after receiving a notice of multiple
worthless check warrants forwarded in accordance with the
provisions of the preceding section, a prosecuting attorney
shall review the information contained therein, may consult
additional current lists of worthless check warrants and make
other investigation, and shall make a written recommendation
to the magistrate court which forwarded the notice:

(1) That a warrant should be issued or a notice should
be forwarded, as may be appropriate, in accordance with the
provisions of section thirty-nine-g of this article, or

(2) That a warrant should be issued for an offense de-
dined under section twenty-four of this article, or

(3) That no action should be taken by the magistrate
court pending a presentation to the appropriate grand jury of
a bill seeking an indictment for an offense defined under section
twenty-four of this article.
(b) Upon receipt of the recommendation of the prosecuting attorney, the magistrate court clerk of the magistrate court holding the pending complaint for worthless check warrant shall forward a copy of the prosecuting attorney's recommendation to the complainant, shall inform the complainant that the prosecuting attorney's recommendation is advisory only, and shall request the complainant to advise the court in what manner he desires to proceed.

§61-3-39. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

(a) Beginning on the first day of July, one thousand nine hundred eighty-three, all checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal which are thereafter printed to be used for drawing against funds held in a consumer deposit account by a supervised financial organization located in the state of West Virginia shall have clearly printed on the face thereof the words "Account opened" and a six-digit combination of numbers and letters as follows:

(1) In the case of a consumer deposit account which has been open for less than one year, the first two digits, running from 01 through 12, shall numerically identify the month the account was opened, the third and fourth digits, running from 01 through 31, shall identify the day of the month the account was opened, and the fifth and sixth digits shall be the last two numbers of the year in which the account was opened.

(2) In the case of a consumer deposit account which has been open for one year or more, the six digits shall be "OneYr+": Provided, That a new account or an account which has been open for less than one year may be treated as an account which has been open for one year or more when a person authorized to draw against funds in the account shall demonstrate to the supervised financial organization through the production of account statements that he has had a demand or other similar deposit account or share account at the same or another financial institution for twelve months immediately preceding his request for printed checks.
(b) For purposes of this section the term "consumer deposit account" means a demand or other similar deposit account or share account established and maintained by a natural person with a supervised financial organization and operated primarily for personal, family or household purposes. The term "supervised financial organization" shall have the same meaning as is ascribed to such term in section one hundred two, article one, chapter forty-six-a of this code.

(c) The commissioner of banking is authorized and empowered to order any supervised financial institution to comply with the provisions of this section and may apply to any state or federal court of competent jurisdiction for appropriate orders, writs, processes and remedies in aid of enforcement.
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-48. Damaging or carrying away, without written permission, shrubbery, flowers, etc., growing within one hundred yards of public roads or trees growing on lands of another; limitation of section; penalty.

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

§61-3-48. Damaging or carrying away, without written permission, shrubbery, flowers, etc., growing within one hundred yards of public road or trees growing on lands of another; limitation of section; penalty.

1 (a) It is unlawful to break, cut, take or carry away, or in any manner to damage any of the shrubbery or flowers, including everything under the title of flora, whether wild or cultivated, growing within one hundred yards on either side of any public road in this state, without the permission in writing of the owner or tenant, of the land upon which the shrubbery or flowers, including everything under the title of flora, are growing.

(b) It is unlawful for any person to enter upon the lands or premises of another without written permission of the owner of the lands or premises, in order to break, cut, take or carry away or in any manner to damage or cause to be broken, cut, taken or carried away or in any manner damaged, any trees or timber on the land.

(c) It is unlawful for any person willfully or knowingly to have in his possession, or to haul along any public road in this state, any trees, shrubbery or flowers, including everything under the title of flora, which are protected by this section, unless the person so having in his possession or hauling the trees, shrubbery or flowers, and any other plant, has permission in writing so to do from the owner or tenant of the land from which they have been taken.

(d) At the request of a law-enforcement officer, a person on the lands or premises of another engaged in any act specified in subsections (a), (b) and (c) of this section shall display the written permission of the owner.
(e) Notwithstanding the provisions of this section, the following shall obtain the permission of an owner before engaging in any act specified in subsection (a) or (b) of this section, but are not required to obtain the permission in writing or to display the written permission as provided in subsection (d) of this section:

(A) An employee of a public utility as defined in section two, article one, chapter twenty-four of this code, which obtained such permission when acquiring a right-of-way upon such premises; or

(B) An employee of the department of highways or of a county or municipality performing roadside maintenance.

(f) Any person who violates the provisions of subsection (a) or (c) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, for the first offense shall be fined not more than fifty dollars, and for subsequent offenses shall be confined in the county jail for not more than three months, or fined not more than fifty dollars, or both, for each offense. Magistrates shall have concurrent jurisdiction with circuit courts for offenses under this section.

(g) Any person who violates the provision of subsection (b) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, for the first offense shall be fined not less than fifty dollars, and for subsequent offenses shall be confined in the county jail for not less than three months or fined not less than fifty dollars or both for each offense.

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

Any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage or carry away or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plant or product of any growing plant, shall be liable to the owner in the amount of three times the value of the timber, trees, growing plants or products thereof, which shall be in addition to and notwithstanding any other penalties by law provided.
AN ACT to amend and reenact sections six, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and twenty-five, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims reparations generally; providing for the appointment and compensation of commissioners and judges to hear claims for reparation; and eliminating the requirement that the court of claims appoint at least three such commissioners; establishing the position of reparations investigator and transferring to such officer the duties heretofore carried out by the attorney general; authorizing the court of claims to fix the compensation of the reparations investigator; providing that such compensation and other expenses shall be payable by appropriation by the Legislature; providing for the filing of applications for reparation awards; setting forth the required contents of applications; requiring a filing fee for such applications; establishing procedures for the investigation of reparation claims and subsequent recommendations to be made by the reparations investigator; providing for the discontinuance of an investigation where such investigation may interfere with or jeopardize a law-enforcement investigation; providing for notice of the reparations investigator's recommendation and the evaluation of the claim by a judge of the court of claims or a commissioner thereof; describing the grounds for denial or reduction of an award and providing for a hearing before a judge or commissioner in the event of disagreement with the approval of an award or the denial of the claim; prescribing evidentiary rules to be applicable at hearings and describing procedures for the gathering of certain evidence; denying the contempt sanction to the court of claims in reparations cases; describing the effect of the prosecution or conviction of an offender upon a claim for reparation; and setting forth measures to be taken by the clerk of the court of claims and law-enforcement agencies to publicize the rights of claimants under the provisions governing crime victims reparations.
Be it enacted by the Legislature of West Virginia:

That sections six, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and twenty-five, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. CLAIMS DUE AND AGAINST THE STATE.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

§14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.

§14-2A-10. Filing of application for reparation award; filing fee; contents.

§14-2A-12. Investigation and recommendations by reparations investigator.

§14-2A-13. Notice to claimant of reparations investigator'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-6. Appointment and compensation of commissioners and judges serving under this article.

1 (a) The court of claims, with the approval of the president of the Senate and the speaker of the House of Delegates, may appoint court of claims commissioners to hear claims for awards 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.

9 (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.

16 (c) The limitation period of one hundred days in section eight, article two of this chapter pertaining to time served by
§14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.

There is hereby established within the office of the clerk of the court of claims the position of reparations investigator, who shall carry out the functions and duties set forth in section twelve of this article. The duties of the attorney general under the prior enactment of section twelve of this article are hereby transferred to the reparations investigator. The reparations investigator shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims. The compensation of the reparations investigator shall be fixed by the court, and such compensation, together with travel, clerical and other expenses of the clerk of the court of claims relating to the reparations investigator carrying out his duties under this article, shall be payable from the crime victims reparation fund as appropriated for such purpose by the legislature.

§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
(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 reparations investigator 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 convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be.

§14-2A-12. Investigation and recommendations by reparations investigator.

(a) The clerk of the court of claims shall transmit a copy of the application to the reparations investigator within seven days after the filing of the application.

(b) The reparations investigator, 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 reparations investigator 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 reparations investigator 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 determination of whether, and the extent to which, a claimant qualifies for an award of reparations. The reparations investigator 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.

In any case wherein the reparations investigator has reason to believe that his investigation may interfere with or jeopardize an investigation of a crime by law-enforcement officers, he
may apply to the court of claims or a judge or commissioner thereof for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the reparations investigator 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 reparations investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the reparations investigator 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 reparations investigator recommends that an award not be made to the claimant, the reason for his decision.

(f) The reparations investigator 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 reparations investigator's recommendation; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the reparations investigator'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 reparations investigator 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 report 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 accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit 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 claimant or victim has not fully cooperated with appropriate law-enforcement 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 reparation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information 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 claim-
ant or of a victim through whom he claims. If an award is re-
duced or a claim is denied because of the expected recou-
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
case 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 recoument, the claim shall be reopened
and an award shall be approved in an amount equal to the
amount of expected recoument that it is determined the
claimant will not receive from the collateral source, subject
to the limitation set forth in subsection (g) of this section.


(a) If either the reparations investigator or the claimant
disagrees with the approval of an award or the denial of a
claim in the summary manner set forth in the preceding
sections of this article, the reparations investigator or the
claimant, or both, shall file with the clerk a request for hearing.
Such request shall be filed within twenty-one days after noti-
fication 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 reparations investigator and the claimant
of the receipt of the request and docketing of the claim, and
shall request the reparations investigator to commence negotia-
tions with the claimant.

(c) During the period of negotiations and pending hearing,
the reparations investigator, shall, if possible, reach an agree-
ment with the claimant regarding the facts upon which the
claim is based so as to avoid the necessity for the introduc-
tion 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 a single judge or commissioner to whom the claim has not been previously assigned. Hearings before a 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 examine 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 commissioner, 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 consideration 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 accept 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 privilege arising from the attorney-client relationship, as to communications or records 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 reparations, the court, judge or commissioner may order the victim or claimant to submit to a mental or physical examination by
a physician or psychologist, and may order an autopsy 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 claim-
ant and the reparations investigator. The order shall specify
the time, place, manner, conditions and scope of the examina-
tion or autopsy and the person by whom it is to be made, and
shall require the person who performs the examination or au-
topsy 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 fur-
nish him a copy of the report. If the victim is deceased, the
clerk of the court of claims, on request, shall furnish the claim-
ant 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 reparations
investigator 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
reparations.

(d) The court, or a judge or commissioner thereof, may re-
quire the claimant to supplement the application for an award
of reparations with any reasonably available medical or psy-
chological reports relating to the injury for which the award
of reparations is claimed.

(e) The court, a judge, a commissioner or the reparations
investigator, 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 in-
stances of the victim's activity, or reputation evidence of the
victim's sexual activity unless it involves evidence of the vic-
tim's past sexual activity with the offender and then only to
the extent that the court, the commissioner or the reparations
investigator 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 reparations investigator 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 reparations investigator, 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 reparations investigator 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 reparations investigator, the proceedings in any claim for an award of reparations pending disposition of a criminal prosecution that has been commenced or is imminent.


(a) The clerk of the court of claims 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-enforcement 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.

CHAPTER 58
(Com. Sub. for S. 8. 586—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to right to bail; providing that bail may not be granted for certain offenses; and judicial review.

Be it enacted by the Legislature of West Virginia:

That section one, 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-1. Right to bail; exceptions; review.

(a) A person arrested for an offense not punishable by life imprisonment shall be admitted to bail by the court or magistrate. A person arrested for an offense punishable by life imprisonment may, in the discretion of the court that will have jurisdiction to try the offense, be admitted to bail.
(b) Bail may be allowed pending appeal from a conviction, except that bail shall not be granted where the offense is punishable by life imprisonment or where the court has determined from the evidence at the trial or upon a plea of guilty or nolo contendere that the offense was committed or attempted to be committed with the use, presentment or brandishing of a firearm or other deadly weapon, or by the use of violence to a person: Provided, That the denial of bail under one of these exceptions may be reviewed by summary petition to the supreme court of appeals or any justice thereof, and the petition for bail may be granted where there is a likelihood that the defendant will prevail upon the appeal. The court or judge allowing bail pending appeal may at any time revoke the order admitting the defendant to bail.

(c) The amount of bail or the discretionary denial of bail at any stage of the proceedings may be reviewed by summary petition first to the lower appellate court, if any, and thereafter by summary petition to the supreme court of appeals or any judge thereof.

CHAPTER 59
(Com. Sub. for H. B. 1114—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation and parole; authorizing courts to impose a period of confinement in the county jail as a condition of probation; and authorizing periods of release for such purposes as the court may direct.

Be it enacted by the Legislature of West Virginia:

That section nine, 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.


Release on probation shall be upon the following conditions:

1. That the probationer shall not, during the term of his probation, violate any criminal law of this or any other state, or of the United States.

2. That he shall not, during the term of his probation, leave the state without the consent of the court which placed him on probation.

3. That he shall comply with the rules and regulations prescribed by the court or by the board of probation and parole, as the case may be, for his supervision by the probation officer.

In addition, the court may impose, subject to modification at any time, any other conditions which it may deem advisable, including, but not limited to, any of the following:

1. That he shall make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he has been convicted.

2. That he shall pay any fine assessed and the costs of the proceeding in such installments as the court may direct.

3. That he shall make contribution from his earnings, in such sums as the court may direct, for the support of his dependents.

4. That he shall, in the discretion of the court, be required to serve a period of confinement in the county jail of the county in which he was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case shall such period of confinement exceed six consecutive months. The court shall have authority to sentence the defendant within such six-months period to intermittent periods of confinement including, but not limited to, weekends or holidays and may...
grant unto the defendant intermittent periods of release in order that he may work at his employment or for such other reasons or purposes as the court may deem appropriate: Provided, That the provisions of article eleven-a of this chapter shall not apply to such intermittent periods of confinement and release except to the extent that the court may direct. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary. The clerk of each circuit court shall report by the fifteenth day of January each year to the administrator of the supreme court of appeals of West Virginia, the number of cases in which a period of confinement was made a condition of probation and the period of confinement ordered in each such case during the preceding calendar year. Before the thirtieth day of the regular session of the Legislature each year, the administrator shall collate the reports submitted by the circuit clerks and file such collation with the clerk of each house of the Legislature.

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CHAPTER 60
(Com. Sub. for S. B. 300—By Mrs. Chees)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact articles seven and eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter fifty of said code, all relating to civil procedures for determining the duty and amount of support of a child or spouse; venue; establishing duty of support; setting forth pari materia construction; establishing civil action for support; providing for forms; establishing civil action for the establishment of paternity; when blood tests required; admissibility of blood tests; costs; modification of support order; setting forth procedures for enforcement of support orders in magistrate or circuit court; forms to be supplied; penalties; appeals
from orders of enforcement; when earnings may be assigned
to the department of welfare; procedure for assignment;
requiring department to promulgate rules and regulations;
when state income tax setoff allowed department of welfare;
procedures for income tax setoff; providing for confidentiality;
establishing criminal penalties for violation thereof; and
increasing the jurisdiction of magistrate courts.

Be it enacted by the Legislature of West Virginia:

That articles seven and eight, chapter forty-eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that section one,
article two, chapter fifty of said code be amended and reenacted,
all to read as follows:

Chapter
48. Domestic Relations.
50. Magistrate Courts.

CHAPTER 48. DOMESTIC RELATIONS.

Article
8. Enforcement of Support Obligations.

ARTICLE 7. INTRASTATE SUPPORT ACT.

§48-7-1. Duty of support.
§48-7-2. Pari materia construction.
§48-7-3. Civil action for support of obligee.
§48-7-4. Civil action for establishment of paternity; when blood tests
required; admissability of tests; costs.
§48-7-5. Modification of support order.

§48-7-1. Duty of support.

(a) Every parent in this state shall continue to have the
duty to support his infant or unemancipated child whether
such child is a resident of this state or elsewhere, and every
infant and unemancipated child shall be entitled to the
support of his parent, to the same extent and in the same
manner as heretofore provided by law.

(b) Every married person shall continue to be entitled to
the support of his spouse, and be obligated to support his
spouse, to the same extent and in the same manner as
heretofore provided by law.
(c) Other duties of support of a parent to a child or of a child to a parent shall not be altered or abrogated by the enactment of this article and may be enforced under its provisions when and only when the court shall specifically find sufficient circumstances under otherwise applicable law to require the enforcement thereof.

§48-7-2. Pari materia construction.

This article shall be construed in pari materia and applied whenever possible to aid in the enforcement of the provisions of article two of this chapter relating to pendente lite decrees in divorce or separate maintenance, final decrees and modification of any such decrees, and the provisions of article nine of this chapter, relating to reciprocal proceedings in other states: Provided, That the remedies established by this article shall be cumulative to and not in lieu of other remedies provided by law, except as otherwise expressly set forth in this article.

§48-7-3. Civil action for support of obligee.

(a) Whenever any person is owed a duty of support from a spouse, such person or any public agency assigned the right to support, shall have a right to institute action for support in the circuit court or magistrate court before a magistrate designated by the judge of the circuit court, or chief judge thereof, of the county wherein the plaintiff resides, the defendant resides, or, if the plaintiff and defendant are married, in which the divorce action between them could be brought. Whenever any infant or unemancipated child is owed a duty of support from any person, the parent or other person having legal custody, the legal guardian, the committee of the child, the child by his next friend, or any public agency assigned the right to support, shall have a right to institute a civil action for support in the circuit court or magistrate court before a magistrate designated by the judge of the circuit court, or chief judge thereof, of the county wherein the named child resides, in which the defendant resides, in which the defendant last lived with a named child or, if the plaintiff and defendant are married, in which a divorce action between them could be brought: Provided, That this subsection shall not limit the right of the department of welfare to pursue funds as set out in section four, article
three, chapter nine of this code, and Title IV of the Federal
Social Security Act of one thousand nine hundred sixty-
five, as amended.

(b) An action for support shall be commenced by the
filing of a verified complaint wherein the names of the
parties and the basis of the alleged duty of support shall be
specifically set forth. Such complaint shall be served on the
defendant in the manner prescribed by law for the service of
original process in a civil action.

(c) If the defendant, by verified responsive pleading,
shall admit, or if he has previously admitted in writing that
he owes a duty of support, or if after a trial on the merits, the
court or jury shall find, by a preponderance of the evidence,
that the defendant owes a duty of support, the court shall
order the defendant to provide support in accordance with
the provisions of subsection (d) of this section.

(d) In setting the amount of support in an order, the
court shall consider the income, the assets, the earning
ability and other obligations of the person owing the duty of
support, and the needs, other income and any other
circumstances relevant to the needs of the obligee. The
court shall order any support for an infant or
unemancipated child be paid until such child reaches the
age of eighteen, marries or is otherwise emancipated.

(e) The clerk of the supreme court of appeals shall
prepare complaint forms which may be utilized by any
eligible party desiring to file a complaint pursuant to the
provisions of this section. The administrator of the supreme
court of appeals shall distribute such forms to the clerk of
the circuit court in each county of this state.

§48-7-4. Civil action for establishment of paternity; when
blood tests required; admissibility of tests; costs.

(a) Any unmarried woman with custody of her child, or
any person who has physical or legal custody of such child,
the guardian or committee of such child, or such child by his
next friend, may institute a civil action to establish the
paternity of the child and to seek support of such child:
Provided, That if a married woman live separate and apart
from her husband for a period of one year or more, and shall
not at any time during such separation, cohabit with such
husband, she may, if she be delivered of a child at any time
after such one year, and while such separation continues,
accuse any person, other than her husband, of being the
father of such child, in a like manner, and the same
proceedings shall thereupon be had, as if she were an
unmarried woman. Such action shall be instituted in the
circuit court of the county wherein the mother, the child or
the defendant resides and shall be commenced within ten
years of the birth of the child by a verified complaint alleging
that the defendant is the father of the named child and
therefore owes a duty to support the child.

(b) The court may, on its own motion, or upon the
motion of any party, order the mother, her child and the
defendant to submit to blood tests. If a blood test is ordered,
the court shall direct that the inherited characteristics,
including, but not limited to, blood types, be determined by
appropriate testing procedures at a hospital, independent
medical institution or independent medical laboratory,
duly licensed under the laws of this state, or any other state,
and shall appoint an expert qualified as an examiner of
genetic markers to analyze and interpret the results and to
report to the court. The court shall consider the results as
follows:

(1) Blood test results which exclude the defendant as the
father of the child are admissible and shall be clear and
convincing evidence of nonpaternity and the court shall,
upon considering such evidence dismiss the action.

(2) Blood tests results which show a statistical
probability of paternity of more than seventy-five percent
are admissible and shall be weighed along with other
evidence of the defendant’s paternity.

(3) If the results of the blood tests or the expert’s
analysis of inherited characteristics is disputed, the court,
upon reasonable request of a party, shall order that an
additional test be made by the same laboratory or another
laboratory at the expense of the party requesting additional
testing.

Verified documentation of the chain of custody of the
blood specimens is competent evidence to establish such
chain of custody. A verified expert’s report shall be
admitted at trial unless a challenge to the testing
procedures or a challenge to the results of blood analysis
has been made before trial. The costs and expenses of mak-
ing such tests shall be paid by the parties in proportions and
at times determined by the court.

(c) If the defendant, by verified responsive pleading
shall admit that he owes a duty of support, or if after a trial
on the merits, the court or jury shall find, by clear and
convincing evidence that the defendant is the father of the
child, the court shall order the defendant to provide support
in accordance with the provisions of subsection (d), section
three of this article.

The prosecutor of the county where the action under this
section is brought shall represent the plaintiff. The
defendant shall be advised of his right to counsel. In the
event he files an affidavit that he is a poor person within the
meaning of section one, article two, chapter fifty-nine of
this code, counsel shall be appointed to represent him. The
service and expenses of counsel shall be paid in accordance
with the provisions of article twenty-one, chapter twenty-
nine of this code: Provided, That the court shall make a
finding of eligibility for appointed counsel in accordance
with the requirements of said article and, if the person
qualifies, any blood tests ordered to be taken shall be paid
as part of the costs of the proceeding.

§48-7-5. Modification of support order.

Any person ordered to pay support in accordance with the
provisions of this article or its predecessors, any obligee of
such support, or any persons eligible to be a party under the
provisions of sections three and four of this article, may
apply to the circuit court or magistrate court wherein such
order was entered for a modification of such order. Such
action shall be commenced by verified petition wherein the
specific reasons for the modification sought shall be set
forth. If the court, upon hearing, finds that there has been a
material change in any circumstances relevant to the
support or amount of support, then the court shall make
specific findings and order a modification of the prior
order.

The clerk of the supreme court of appeals shall prepare
motion forms which may be utilized by any eligible party
desiring to file a motion pursuant to the provisions of this
section. The administrator of the supreme court of appeals
shall distribute such forms to the clerk of the circuit court
and magistrate court in each county of this state.

ARTICLE 8. ENFORCEMENT OF SUPPORT OBLIGATIONS.

§ 48-8-1. Proceedings to enforce order of support; penalties.
§ 48-8-2. Appeals from order of enforcement; procedure.
§ 48-8-3. Child support arrearage; when earnings may be assigned
to the department of welfare; procedure of assignment.
§ 48-8-4. Child support arrearage; income tax setoff allowed depart­
ment of welfare; procedure therefor; penalties.
§ 48-8-5. Civil judgments; enforcement; procedures.

§ 48-8-1. Proceedings to enforce order of support; penalties.

(a) If at any time a party is in arrears in the payment of
support ordered under the provisions of article seven of this
chapter, any person to whom such support is due and owing,
or any persons eligible to be a party under the provisions of
sections three and four of this article, shall be entitled to
seek enforcement of the order of support by filing a verified
petition in the magistrate court or circuit court of the
county wherein the original proceedings were had.

(b) The clerk of the supreme court of appeals shall
prepare complaint forms which may be utilized by any
eligible party desiring to file a complaint pursuant to the
provisions of subsection (a) of this section. The
administrator of the supreme court of appeals shall
distribute such forms to the clerks of every magistrate court
and circuit court in this state.

(c) After a hearing on the allegations raised in the
petition the magistrate court or circuit court shall, in order
to effect payment of arrearage:

(1) Enter judgment for such arrearage; and

(2) Award interest on such arrearage from the due date
of each unpaid installment.

(d) The court may, in addition to the remedies provided
in subsection (c) of this section:

(1) Require security to ensure the timely payment of
future installments;
(2) Upon finding a person in contempt for willfully failing to comply with its order, and upon finding that the person has the ability to purge himself but refuses so to do, then the court may confine the defendant to the county jail for a term not to exceed six months or until such time as the defendant has purged himself, whichever shall first occur; or

(3) Enter an order to attach forthwith any person who refuses or fails to respond to the lawful process of court or to the court's order.

(e) Any party who shall without good cause quit employment or cause himself to be terminated from employment, refuse to seek employment, or transfer or otherwise dispose of assets or income for the purpose of avoiding his duty to pay support or for the purpose of avoiding the present ability to pay support, or who knowingly and intentionally fails to provide support when he has the ability to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for not less than forty-eight hours nor more than thirty days.

§48-8-2. Appeals from order of enforcement; procedure.

(a) Any party seeking an appeal from the entry of an order of a circuit court entered pursuant to the provisions of section one of this article shall seek such appeal in accordance with the general law relating to civil appeals.

(b) Any party seeking an appeal from the entry of an order of a magistrate court entered pursuant to the provisions of section one of this article shall proceed in accordance with the provisions of section thirteen, article five, chapter fifty of this code.

§48-8-3. Child support arrearage; when earnings may be assigned to the department of welfare; procedure of assignment.

(a) Any person, firm, corporation, political subdivision or agency of the state employing a person with an obligation of support for a child, and the rights to such support have been assigned to the department of welfare in accordance with the provisions of section four, article three, chapter
nine of this code and Title IV of the Federal Social Security Act of one thousand nine hundred sixty-five, as amended, shall honor, according to its terms, an assignment of earnings executed by the responsible parent and presented by the department of welfare as a plan to satisfy or retire an obligation for support of a child. This requirement to honor the assignment of earnings and the assignment document itself, shall be applicable where the earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the department: Provided, That any such assignment shall be subject to the limitations on the amount which may be paid to the assignee as provided in section three, article five-a, chapter thirty-eight of this code. Payment of moneys pursuant to an assignment of earnings presented by the department shall serve as full acquittance of the employer’s obligation under any contract of employment, and the state warrants and represents that it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The department shall be released from liability for improper receipt of moneys under an assignment of earnings, upon return of any moneys so received. Any person who fails to honor a duly executed assignment of earnings is liable to the department in an amount equal to one hundred percent of the amount of the assignment of earnings, plus costs, interest and reasonable attorney fees.

(b) Any such assignment of earnings shall be in addition to, and not in lieu of, any and all existing remedies allowed the department to enforce child support obligations.

(c) An employer shall not discharge or otherwise discipline an employee as a direct or indirect result of an assignment of earnings authorized by this section.

(d) The person, firm, corporation, political subdivision or agency of the state required to honor an assignment of earnings pursuant to this section shall be entitled to receive from the debtor a fee of two dollars for each answer or remittance on account of such debtor.

(e) The assignment of earnings provided for in this section shall be on a form prescribed by the supreme court of appeals and supplied to the department of welfare.
The assignment of earnings may only be executed and made available for such purpose to the person owing the duty of support when the department notifies such person that he is in arrearage of support payments for at least two months. The notice shall further provide that the department has been assigned the right to receive such payments, the date of such assignment and the amount paid to date by the department for the support of the obligee's child. The notice shall provide that the obligee may pay to the department such moneys that the department is entitled, by law, to receive, and shall further provide that, alternatively, the obligee may execute the attached assignment of earnings and return the same to the department. The notice shall also specify that the assignment of earnings, upon receipt by the department, shall entitle the department to offer the same to the obligee's employer so that the department may receive a portion of the wages, as may be allowed by law. The obligee shall also be informed that his employer, upon receipt of the executed assignment from the department shall have no right to discharge or otherwise discipline him as a direct or indirect result of such assignment.

The department shall promulgate rules and regulations to administer the provisions of this article.

§48-8-4. Child support arrearage; income tax setoff allowed department of welfare; procedure therefor; penalties.

(a) Whenever any person owes an obligation of support for a child and the rights to such support have been assigned to the department of welfare in accordance with the provisions of section four, article three, chapter nine of this code and Title IV of the Federal Social Security Act of one thousand nine hundred sixty-five, as amended, the state tax department shall upon request by the commissioner of welfare, assist in the collection of the obligation of support: Provided, That the commissioner of welfare shall only be entitled to make such request whenever the obligation of support is in arrearage in an amount exceeding one hundred fifty dollars.

(b) The tax department shall assist by setting off any amount of the debtor's tax refund sufficient to satisfy the
15 debt certified by the commissioner of welfare. If the refund
16 is insufficient to satisfy the debt, the entire amount may be
17 applied to the debt.
18 (c) The tax department and the department of welfare
19 shall promulgate rules and regulations to implement the
20 provisions of this section. Such rules and regulations shall
21 provide for the confidentiality of records reviewed for
22 purposes of this section. Adequate notice and right to a
23 hearing shall be afforded the debtor as well as the right to
24 an administrative and judicial appeal. Any person who fails
25 to comply with the confidentiality requirements prescribed
26 by such rules and regulations shall be guilty of a
27 misdemeanor, and, upon conviction thereof, shall be fined
28 not more than one thousand dollars or confined in the
29 county jail for not more than six months, or both fined and
30 imprisoned.

§48-8-5. Civil judgments; enforcement; procedures.
1 In any proceeding under article seven or eight of this
2 chapter, where a court has ordered that a person shall make
3 payments of child support, any person or agency authorized
4 to bring an action under this article may file an affidavit
5 with the clerk of the circuit court in the county in which the
6 order was entered stating the terms and date of the original
7 order and the amount of money which has not been paid by
8 the person owing a duty of support and which is due and
9 owing. Upon receipt of such affidavit, the clerk shall issue a
10 writ of execution, suggestion or suggestee execution. The
11 clerk of the circuit court shall prepare a form affidavit to be
12 used under this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

*§50-2-1. Civil jurisdiction.
1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the
3 peace, magistrate courts shall have jurisdiction of all civil
4 actions wherein the value or amount in controversy or the
5 value of property sought, exclusive of interest and cost, is

*Clerk's Note: This section was also amended by H. B. 1113, which passed
prior to this act.
not more than two thousand dollars. Notwithstanding the
provisions of section eleven, article five of this chapter, or
any other limitations to the contrary, magistrate courts
shall have jurisdiction to enter an order for support and to
enforce said orders as provided in articles seven and eight,
chapter forty-eight of this code. Magistrate courts shall
have jurisdiction of matters involving unlawful entry or
detainer of real estate so long as the title to such real estate
is not in dispute. Except as the same may be in conflict with
the provisions of this chapter, the provisions of article
three, chapter fifty-five of this code, regarding unlawful
entry and detainer, shall apply to such actions in magistrate
court. Magistrate courts shall have jurisdiction of actions
on bonds given pursuant to the provisions of this chapter.
Magistrate courts shall have continuing jurisdiction to
entertain motions in regard to post-judgment process
issued from magistrate court and decisions thereon may be
appealed in the same manner as judgments.

Magistrate courts shall not have jurisdiction of actions in
equity, of matters in eminent domain, of matters in which
the title to real estate is in issue, of proceedings seeking
satisfaction of liens through the sale of real estate, of
actions for false imprisonment, of actions for malicious
prosecution or of actions for slander or libel or of any of the
extraordinary remedies set forth in chapter fifty-three of
this code.

Magistrates, magistrate court clerks, magistrate court
deputy clerks and magistrate assistants shall have the
authority to administer any oath or affirmation, to take any
affidavit or deposition, unless otherwise expressly provided
by law, and to take, under such regulations as are prescribed
by law, the acknowledgment of deeds and other writings.

CHAPTER 61

(5. B. 365—By Mr. Heck and Mr. Palumbo)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact section eighteen, article five of said chapter; and to amend article eight of said chapter by adding thereto a new section, designated section one-a, all relating to minimum age for kindergarten and public school attendance; changing the eligibility date from November one to September one; adding special provisions for Montessori kindergartens; providing that certain determinations of the board relating to kindergarten be final; changing compulsory school attendance from seven to six years old; providing that certain kindergarten attendance fulfills compulsory school requirements; requiring kindergarten for entrance into public schools; providing for exceptions thereto; and providing for advanced entrance or placement.

Be it enacted by the Legislature of West Virginia:

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

Article
2. State Board of Education.
5. County Board of Education.
6. Compulsory School Attendance.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; public school entrance age; “public schools” not to include kindergartens.

Subject to and in conformity with the constitution and laws of this state, the state board of education shall determine the educational policies of the state and shall make rules for carrying into effect the laws and policies of the state relating to education, including rules relating to the physical welfare of pupils, the education of feeble-minded and physically disabled or crippled children of school age, school attendance, evening and continuation or part-time day schools, school extension work, the
classification of schools, the issuing of certificates
upon credentials, the distribution and care of free text-
books by the county boards of education, the general
powers and duties of county boards of education, and
of teachers, principals, supervisors and superintendents,
and such other matters pertaining to the public schools
of the state as may seem to the state board to be necessary
and expedient.

Notwithstanding any other provision of law which
may be to the contrary, and notwithstanding the rule-
making powers given to the state board of education by
this section, a child shall not be permitted to enter the
public schools of this state in any school year, beginning
with the school year one thousand nine hundred eighty-
three—eighty-four, unless such child be six years of age
prior to September one of such school year or is attending
public school in accordance with article twenty of this
chapter: Provided, That children who have successfully
completed a kindergarten program in the school year one
thousand nine hundred eighty-two—eighty-three, may
enter the public schools notwithstanding the provisions
of this section. The term “public schools” as used in the
preceding sentence shall not be deemed to include public
kindergartens, but nothing herein shall prevent a county
board from permitting a child enrolled in kindergarten
from entering public schools for attendance in particular
curriculum areas.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

1 County boards of education shall provide by the school
year one thousand nine hundred eighty-three—eighty-
four, and continue thereafter kindergarten programs for
all children who shall have attained the age of five prior
to September first of the school year in which the pupil
enters such kindergarten program and may establish
kindergarten programs designed for children below the
age of five: Provided, That nothing herein shall prohibit
children who shall have attained the age of five prior to
November first of the school year one thousand nine
hundred eighty-three—eighty-four from entering such kindergarten program.

Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by regulations established by the state board of education. The state board of education shall establish and prescribe guidelines and criteria setting forth the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel shall be employed in any kindergarten program unless he meets such minimum requirements.

The state board of education with the advice of the state superintendent of free schools shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed are also intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of such programs, provided application for such evaluation and approval is made in writing to the state board by proper authorities in control of such programs. The state superintendent of free schools at intervals not to exceed two years shall publish a list of nonpublic kindergarten programs that have been approved in accordance with the provisions of this section and a list of Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method. Teachers who have training or experience in the use of the Montessori method of instruction for kindergartens shall be deemed to be approved to teach in such kindergartens using the Montessori method without additional certification.

Pursuant to such guidelines and criteria, and only pursuant to such guidelines and criteria, the county boards
may establish programs taking kindergarten to the 
homes of the children involved, using educational tele-
vision, paraprofessional personnel in addition to and to 
supplement regularly certified teachers, mobile or perm-
manent classrooms and other means developed to best 
carry kindergarten to the child in its home and enlist 
the aid and involvement of its parent or parents in 
presenting the program to the child; or may develop 
programs of a more formal kindergarten type, in existing 
school buildings, or both, as such county board may 
determine, taking into consideration the cost, the terrain, 
the existing available facilities, the distances each child 
may be required to travel, the time each child may be 
required to be away from home, the child's health, the 
involvement of parents and such other factors as each 
county board may find pertinent. Such determinations by 
any county board shall be final and conclusive.

Funds for implementing the kindergarten programs 
during the fiscal year one thousand nine hundred seventy-
two, and thereafter, shall be allocated to counties from a 
special appropriation to the state department of education 
from the general revenue fund: Provided, That except 
for expenditures from the general revenue funds for 
regional kindergarten demonstration centers, in no event 
shall any state money from the general fund be expended 
under the provisions of this section unless federal funds 
are available for the purpose of this section.

Allocations to counties will be made on the basis of 
approved kindergarten programs. The West Virginia 
board of education shall establish criteria and standards 
necessary to guide counties in developing approvable 
kindergarten programs and shall determine funding 
levels of said programs on local operating costs.

An additional appropriation shall be made to the state 
department of education from the general revenue fund 
to establish and operate during the fiscal year one thou-
sand nine hundred seventy-two, regional kindergarten 
demonstration centers in educational regions three, four, 
five, six and seven, and thereafter in regions one through
seven. Said funds shall be allocated to said regions for establishing and operating regional demonstration centers in accordance with criteria and standards established by the West Virginia board of education. Said regional centers shall be established to provide exemplary and innovative kindergarten programs, to provide laboratory experiences for preservice and in-service education for professional personnel and staff development programs for training paraprofessional personnel, to establish organizational and administrative machinery designed to promote cooperation between and among all agencies involved in the education and development of young children, and to promote cooperation between counties in providing high cost supervisory, developmental, research and evaluative services not currently available to individual counties.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Compulsory school attendance; public school entrance requirements; exceptions thereto.

1 Notwithstanding the provisions of section one of this article, compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to September one of such year and continue to the sixteenth birthday. Attendance at a state-approved or Montessori kindergarten, as provided for in section eighteen, article five of this chapter, shall be deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance with section five, article two of this chapter, each child must have either (1) successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program, or (2) successfully completed an entrance test of basic readiness skills approved by the county in which the school is located: Provided, That such test be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the board. Notwithstanding the provisions of this section and of section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for ad-
22  vanced entrance or placement under policies adopted by
23  said board for any child who has demonstrated sufficient
24  mental and physical competency for such entrance or
25  placement. Nothing herein shall prevent a student from
26  another state from enrolling in a public school in West
27  Virginia in such grade as the student was enrolled at the
28  school from which he transferred.

CHAPTER 62
(Com. Sub. for S. B. 444—Mr. McGraw, Mr. President, and Mr. Heck)

[Passed March 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permits required for correspondence, business, occupational and trade schools; providing for the application for, purpose, issuance, renewal and revocation of permits; increasing the surety bond and providing a fee for solicitors; requiring certain reports; authorizing rules and regulations including evaluations; providing for enforcement; and increasing the penalty.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, 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 2.  BOARD OF EDUCATION.

§18-2-10.  Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

1  It shall be unlawful for any person representing a
2  correspondence, business, occupational or trade school
inside or outside this state to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first obtains a permit from the West Virginia board of education in the manner and on the terms herein prescribed.

The application for a permit shall be made on forms to be furnished by the board. The application shall be accompanied by a surety bond in the penal sum of twenty-five thousand dollars and by a fee of ten dollars. The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment or failure of the school to meet contractual obligations. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of education and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. The ten dollar fee will entitle a school to register up to two individual solicitors. Additional solicitors may be registered by paying a five dollar fee for each registration submitted.

A permit shall be valid for one year corresponding to the effective date of the bond and, upon application, accompanied by the required fee and the surety bond as herein required, may be renewed. All fees collected for the issuance or renewal of such permit shall be deposited in the state treasury to the credit of the general school fund.

The board may refuse a permit to any school if the board finds that the school engages in practices which are inconsistent with this section or with rules and regulations issued pursuant thereto. A permit issued hereunder, upon fifteen days' notice and after a hearing, if a hearing is requested by the school, may be suspended or revoked by the board of education for fraud or misrepresentation in soliciting or enrolling students, for
failure of the school to fulfill its contract with one or more students who are residents of West Virginia, or for violation of or failure to comply with any provision of this section or with any regulation of the state board of education pertinent thereto. Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the state board of education, on forms furnished by the board, providing such appropriate information as the board reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the West Virginia board of education a list of its official representatives. Each school shall be issued a certificate of identification by the state board of education for each of its official representatives.

The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school nor any representative of a school shall make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of education or any other department or agency of the state.

The state board of education is hereby authorized to adopt rules and regulations for evaluation of schools, for the administration and enforcement of the provisions of this section, and to establish an advisory committee of not less than five owners or other representatives of privately owned correspondence, business, occupational and trade schools. Correspondence, business, occupational and trade schools which have their home office in West Virginia and which are fully accredited members of nationally recognized accrediting associations approved by the West Virginia board of education shall be exempted
from any rules and regulations for evaluation of schools by the state board as authorized by this section.

A representative of any school violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars per day of violation, not to exceed a maximum of two thousand dollars per violation, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The attorney general or any county prosecuting attorney, at the request of the state board of education or upon his own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

CHAPTER 63
(Com. Sub. for H. B. 1546—By Mrs. Martin and Mr. Conley)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen-h, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-six, relating to the acquisition and operation of college or university parking facilities or areas; removing the provisions from the article relating to the state board of education and placing them in the article relating to the board of regents; authorizing the board of regents to promulgate rules and regulations governing the speed flow and parking of vehicles on campus roads, driveways and parking facilities or areas; establishing civil penalties payable to a designated official of the college or university
under certain circumstances for each violation of the rules and regulations; granting jurisdiction over violations to magistrates and municipal police court judges in certain instances; establishing criminal penalties for each finding of a violation by a magistrate or municipal police court judge; providing for the removal of vehicles from campus roads, driveways and parking facilities or areas under certain circumstances; providing that the college or university shall pay for the removal of a vehicle and have a right to reimbursement and storage costs from the owner thereof; and empowering the college or university to enforce a lien against the owner of a vehicle for the costs of removing and storing the vehicle.

Be it enacted by the Legislature of West Virginia:

That section thirteen-h, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-six, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-26. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

The West Virginia board of regents is hereby authorized to construct, maintain and operate automobile parking facilities or areas upon any premises owned or leased at any college or university under its jurisdiction for use by students, faculty, staff and visitors. The board may charge fees for use of the parking facilities or areas under its control. All moneys collected for the use of the parking facilities or areas shall be paid to the credit of the college or university at which the fees were charged into a special fund which is hereby created in the state treasury. The moneys in the fund shall be used first to pay the cost of maintaining and operating the parking facilities or areas, but any excess not needed for this purpose may be used for the acquisition of property by lease or pur-
chase and the construction thereon of additional parking fac-
cilities or areas. Any money in the fund not needed immediately
for the acquisition, construction, maintenance or operation of
the parking facilities or areas may be temporarily invested by
the board of regents with the state board of investments to
the credit of the college or university at which the fees were
charged.

Notwithstanding any other motor vehicle or traffic law or
regulation to the contrary, the board of regents is hereby
authorized to regulate and control at any college or univer-
sity under its jurisdiction the speed, flow and parking of ve-
hicles on campus roads, driveways and parking facilities or
areas. Rules and regulations for this purpose shall be promul-
gated by the board in the manner prescribed in chapter twenty-
nine-a of this code and when so promulgated shall have the
force and effect of law. In each parking facility or area a
summary of the rules and regulations governing the use of
the facility or area and of the penalties which may be imposed
for violations of the rules and regulations shall be conspic-
uously posted. Along each campus road and driveway, notice
signs pertaining to the speed of vehicles, spaces available for
parking, directional flow of traffic and penalties which may be
imposed for violations of the rules and regulations shall be
conspicuously posted.

Any person parking any vehicle or operating any vehicle
in violation of the rules and regulations shall be issued a
citation describing the offense charged and ordering an ap-
pearance within five days, excluding Saturdays, Sundays and
holidays observed by the college or university, before a desig-
nated official of the college or university and, if the person
cited fails to appear within said five days, ordering an appear-
ance before a magistrate located in the county in which the
college or university is located or before the judge of the
municipal court, if the college or university is located within
a municipality having such an official.

The designated official of the college or university shall have
exclusive jurisdiction of the offense during the five-day per-
iod, and any person so cited may plead no contest to the of-

fense and, by so pleading, shall be subject to a civil penalty of
ten dollars for each offense as partial reimbursement to the college or university for the cost of regulating traffic and parking. Moneys derived from civil penalties imposed herein shall be deposited in the special fund in the state treasury created by this section and credited to the college or university at which the penalty was paid.

Upon the expiration of the five days, or upon a pleading of not guilty before the designated official of the college or university within the five days, the magistrate or judge of the municipal court shall have jurisdiction of the offense and any person cited under the provisions of this section, upon a finding of guilty by the magistrate or municipal judge, shall be subject to a fine of not less than ten dollars nor more than twenty dollars for each offense.

Each designated official of the college or university presiding over a case under the provisions of this section shall keep or cause to be kept a record of every citation which alleges a violation of such provisions, or the rules and regulations promulgated in accordance therewith, and shall keep a record of every official action in reference thereto including, but not limited to, a record of every plea of no contest, conviction or acquittal of the offense charged and the amount of the fine or of the civil penalty resulting from each citation.

Whenever a vehicle is parked on any college or university campus road, driveway or parking facility or area in a manner which violates posted regulations and substantially impedes the flow of traffic or endangers the health and safety, the institution may, in addition to the issuing of a citation and subsequent procedures set forth herein, remove the vehicle, by towing or otherwise, to an area or areas designated for this purpose. The vehicle, having been towed to the designated area or areas, may be rendered immovable by use of locking wheel blocks or other device not damaging to the vehicle. The college or university shall not be liable for any damage to a vehicle towed to, or kept in, a designated area pursuant to the provisions of this section. The college or university shall pay for the cost of removing the vehicle and shall have a right to reimbursement from the owner for this cost and for the reasonable cost of keeping the vehicle in the designated area.
Until payment of these costs, the college or university may retain possession of the vehicle, and the college or university shall have a lien on the vehicle for the amount due. The college or university may enforce this lien in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

CHAPTER 64
(Com. Sub. for H. B. 1009—By Mr. Murphy)

[Passed March 12, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, five and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the classification of school subjects into adoption groups; extending the adoption schedule to six years; creating a new adoption group; and authorizing the state board of education to grant permission to county boards of education to continue use for a period not to exceed six years.

Be it enacted by the Legislature of West Virginia:

That sections one, four, five 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-4. Execution of contracts; bond.

§18-2A-5. Selection by county boards.

§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 eighty-three, 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 six adoption groups. The six 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 eighty-nine for a period of six years.

(b) Adoptions in Group II shall be made in one thousand nine hundred eighty-four for a period of six years.

(c) Adoptions in Group III shall be made in one thousand nine hundred eighty-five for a period of six years.

(d) Adoptions in Group IV shall be made in one thousand nine hundred eighty-six for a period of six years.

(e) Adoptions in Group V shall be made in one thousand nine hundred eighty-seven for a period of six years.

(f) Adoptions in Group VI shall be made in one thousand nine hundred eighty-eight for a period of six years.

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 six years.

§18-2A-4. Execution of contracts; bond.

When the selection and approval of the multiple list have been properly made, it shall be the duty of the state board to execute contracts for the selected books with the publishers within thirty days of the approval and adoption of the multiple list, prepare a list of the adopted books on the multiple list and publish same, and send a copy to each county superintendent not later than January first of the year of the county adoption. Such contracts for adoption by the state board of education shall run for six years.

Each publisher awarded a textbook contract by the state shall enter into a bond payable to the state of West Virginia in the penal sum of not less than two thousand dollars and not more than five thousand dollars to be approved by the state board of public works, such bond to be executed as
surety by some responsible surety company authorized to carry on its business in West Virginia. Such contract shall be prepared by the attorney general in accordance with the terms and provisions of this article. Such contract shall be executed in duplicate, one copy to be held by the publisher and one by the state board of education.

Bonds required of successful publishers shall provide that:

(a) The publisher will furnish any of the books on the multiple list which he publishes for a period of the adoption, from the date of the bond, to any county school unit, or to a dealer appointed by the county, at the lowest wholesale price contained in the bid, f.o.b. publisher's nearest shipping point;

(b) The publisher will automatically reduce such prices in West Virginia when prices are reduced anywhere in the United States, so that no such book shall at any time be sold in West Virginia at a higher wholesale price than received for that book elsewhere in the United States, like conditions prevailing;

(c) All books sold in West Virginia will be identical with the official samples filed with the state board of education as regards size, paper, binding, print, illustrations, subject matter, and other particulars which may affect the value of the books. The state board of education may, however, during the period of the contract approve revised editions of an adopted book or series, which will authorize a publisher to furnish such revisions.

§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 six years unless as provided for elsewhere in this article.

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-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 sec-
ondary 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 grant permi-
sion to county boards of education for the continued use of pre-
EDUCATION

AN ACT to amend and reenact section one, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to election and term of the county superintendent of schools; appointment of an interim superintendent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.

The superintendent shall be elected by the board to serve for a term of not less than one, nor more than four years. At the expiration of the term or terms for which he shall have been elected, each superintendent shall be eligible for reelection for additional terms of not less than one, nor more than four years: Provided, That at the expiration of his term or terms of service he shall be given the status of teacher in the system unless dismissed for statutory reasons. Such election shall be held on or before the first day of May and the person so elected shall take office on the first day of July following. A superintendent who fills a vacancy caused by an incomplete term shall be appointed to serve until the following first day of July: Provided, however, That the board may appoint an
interim superintendent to serve for a period not to exceed one hundred twenty days from the occurrence of the vacancy. The president of the board, immediately upon the election of the superintendent, or the appointment of an interim superintendent, shall certify the election or appointment to the state superintendent of schools. The superintendent in office on the effective date of this section shall continue in office until the expiration of his term.

CHAPTER 66

(Com. Sub. for H. B. 1760—By Mr. Mullett)

[Passed March 3, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county boards of education to lease school buses and provide drivers to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities; and requiring that lessee bear all costs and expenses of transportation.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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 The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

2 (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 disburse-
ments 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 (8) of this section;

(7) To lease school buses operated only by drivers regularly employed by the board to public and private non-profit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee;

(8) 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;

(9) 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;

(10) 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;
(11) 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;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) 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;

(15) 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

(16) 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 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 curricular or noncurricular activities.

The board of each county shall expend under such regulations 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 67

(Com. Sub. for S. B. 591—By Mr. Tonkovich and Mr. Nelson)

[Passed March 12, 1983; in effect July 1, 1983. 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, relating to maximum teacher-pupil ratio; delaying by one year the ratio limit for grades three through six; limiting the number of classrooms with two or more grades; and providing for exceptions to the teacher-pupil ratio and limitations thereto.

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 BOARDS 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 and second grade classroom, or classrooms having two or more grades that include either the first or second grades, shall not have more than twenty-five pupils for each
teacher of the grade or grades and shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefor by a county board of education.

County boards of education shall provide by the school year one thousand nine hundred eighty-four—eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and sixth grade classroom, or classrooms having two or more grades that include one or more of the third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher of the grade or grades.

Beginning with the school year one thousand nine hundred eighty-six—eighty-seven, and thereafter, no county shall maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of the first day of January, one thousand nine hundred eighty-three: Provided, That for the prior school years, and only if there is insufficient classroom space available in the school or county, a county may maintain one hundred ten percent of such number of classrooms.

During the school year one thousand nine hundred eighty-four—eighty-five, 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 pupils per teacher in a specific kindergarten classroom and twenty-five pupils per teacher in a specific classroom in grades one 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.

The state board of education shall establish guidelines
AN ACT to amend and reenact section nineteen-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adult education classes and programs; removing the entrance-age requirement; providing general authority to each county board of education to contract for instruction for classes or programs; and requiring that tuition money be credited to the account for adult education.

Be it enacted by the Legislature of West Virginia:

That section nineteen-b, 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.

§18-5-19b. Adult education classes and programs; tuitions; authority of county boards to contract with federal agencies, etc.

1 The board of education of any county shall have authority to provide classes and programs for adult education and to charge tuition for members of such classes and/or programs, such tuitions not to exceed in any case the actual cost of operation of such classes and/or programs.

6 The county board of education shall also have authority to enter into contracts of agreement with authorized agencies of the federal government for the education of adults and to provide, assemble and house materials and
equipment for efficient instruction in any and all such classes and/or programs, contract for instruction for the term of the class and/or program to be offered, and to use school facilities by way of buildings and equipment under the control of said board. Any funds accruing from such tuitions shall be credited to adult education in the current expense fund of the county board of education and reported each year as of June thirtieth in the manner required for other financial reports of the board.

CHAPTER 69
(Com. Sub. for H. B. 1075—By Mr. Manchin)

[Passed February 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one-e, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules and regulations for the care, distribution and use of free textbooks; and deleting the reference to racial segregation.

Be it enacted by the Legislature of West Virginia:

That section twenty-one-e, 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.

§18-5-21e. Rules and regulations for care, distribution and use of free textbooks; reports by county boards; funds may be withheld from county for violation of rules.

The state board of education shall have authority to prescribe rules and regulations governing the care, distribution and use of free textbooks including their rebinding, reconditioning, replacement, return and storage, and such other measures as may be necessary for efficient and economical administration.
The state board of education is further authorized to prescribe and require reports to be made by the various county boards of education concerning the expenditures and distributions and conditions of inventories at such time and in such form as the board may require.

The state superintendent of schools is authorized to withhold the state allotment of free textbook money from any county for violation of the rules and regulations herein authorized.

CHAPTER 70

(Com. Sub. for S. B. 563—By Mr. Heck, Mr. Holliday and Mr. Tucker)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the seniority rights for school personnel and substitute school service personnel; providing for how professional personnel seniority shall be determined; requiring the county board to give reasons in writing to the professional applicant with the most seniority who is not hired to a classroom teacher's position; providing for professional reduction in force and right to recall; providing for posting and filling of professional positions; defining qualifications of service personnel; allowing professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, to be considered for such jobs or positions after service personnel whose employment has been discontinued; requiring boards to substantiate reasons for failure to observe seniority in promotions or hiring, if the employee so requests; providing continuing protection for those employed at the time of original enactment of the provisions for seniority rights; providing
for the acceptance of extra-duty assignments and allowing an alternate procedure if approved by two thirds of the employees; defining extra-duty assignments; requiring boards to post notices of job vacancies; providing that vacancies must be filled within twenty days; providing for reductions in force and preferred recall list; allowing mandamus to compel compliance; making boards liable for certain costs, reasonable attorney's fees; and retroactive wages and benefits from local funds when not prevailing in mandamus suit; requiring that substitute school service personnel be assigned on basis of seniority; allowing such substitutes to be assigned to temporarily fill vacancies created by transfers; requiring that substitutes working for service employee suspended for more than thirty days be accorded all rights, privileges and benefits of the position filled; allowing substitutes to be assigned temporarily to newly created positions; providing for assignment of substitutes on rotating basis in order of seniority; requiring that regular employee be given opportunity to temporarily fill position at his same work station or building during temporary absence of fellow employee; and granting certain substitute school service personnel the same rights pertaining to suspension, dismissal and contract renewal as afforded to regularly employed service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for professional and school service personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-8b. Seniority rights for professional and school service personnel.

1 (a) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been professionally employed by the county board of education. For purposes of establishing seniority as hereinafter provided, when an employee holds valid
certification or licensure in one or more areas, the seniority shall accrue in each area. Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority.

A county board of education shall make decisions affecting promotion and filling of any classroom teacher’s position occurring on the basis of qualifications. If the applicant with the most seniority is not selected for the position a written statement of reasons shall be given to the applicant with the most seniority with suggestions for improving the applicant’s qualifications.

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 professional position where he had previously been employed or to any lateral area 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 professional personnel 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. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position. Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify
all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause such employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification and/or licensure.

Boards shall be required to post and date notices of all openings in established, existing or newly created positions in conspicuous working places for all professional personnel to observe for at least five working days. The notice of such position openings shall include the job description. No vacancy shall be filled until after the five-day minimum posting period.

(b) A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight, article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this section, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies.

Applicants shall be considered in the following order:

1. Regularly employed service personnel;
2. Service personnel whose employment has been discontinued in accordance with this section;
3. Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
(4) Substitute service personnel; and

(5) New service personnel.

The county board of education may not prohibit a service employee from retaining or continuing his employment in any positions or jobs held prior to the effective date of this section and thereafter.

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title listed in section eight, article four of this chapter shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries.

For purposes of determining seniority under this section, an employee’s seniority begins on the date that he enters into his assigned duties.

Notwithstanding any other provisions of this chapter to the 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 employees 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: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category.
of employment. For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of such job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions.

All decisions by county boards of education concerning reduction in work force of service personnel shall be made on the basis of seniority, as hereinafter provided.

The seniority of any such service personnel 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 purpose 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.

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 lateral position for which the employee is qualified or to a lateral 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 reemployment.

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. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and payable entirely from local funds. Further, the board shall be liable
207 to any party prevailing against the board for any court
208 reporter costs including copies of transcripts.

§18A-4-15. Employment of service personnel substitutes.

1 The county board shall employ and the county
2 superintendent, subject to the approval of the county board
3 of education, shall assign substitute service personnel on
4 the basis of seniority to perform any of the following duties:
5 (1) To fill the temporary absence of another service
6 employee;
7 (2) To fill the position of a regular service employee on
8 leave of absence: Provided, That if such leave of absence is
9 to extend beyond thirty days, the board, within twenty
10 working days from the commencement of the leave of
11 absence, shall give regular employee status to a person
12 hired to fill such position. The person employed on a regular
13 basis shall be selected under the procedure set forth in
14 section eight-b of this article. The substitute shall hold such
15 position and regular employee status only until the regular
16 employee shall be returned to such position and the
17 substitute shall have and shall be accorded all rights,
18 privileges and benefits pertaining to such position;
19 (3) To perform the service of a service employee who is
20 authorized to be absent from duties without loss of pay;
21 (4) To temporarily fill a vacancy in a permanent
22 position caused by severance of employment by the
23 resignation, transfer, retirement, permanent disability or
24 death of the regular service employee who had been
25 assigned to fill such position: Provided, That within twenty
26 working days from the commencement of the vacancy, the
27 board shall fill such vacancy under the procedures set out in
28 section eight-b of this article and section five, article two of
29 this chapter and such person hired to fill the vacancy shall
30 have and shall be accorded all rights, privileges and
31 benefits pertaining to such position;
32 (5) To fill the vacancy created by a regular employee's
33 suspension: Provided, That if the suspension is for more
34 than thirty working days the substitute service employee
35 shall be assigned to fill the vacancy on a regular basis and
36 shall have and be accorded all rights, privileges and
benefits pertaining to such position until such termination
by the county board of education becomes final. If the
suspended employee is not returned to his job, the board
shall fill the vacancy under the procedures set out in section
eight-b of this article and section five, article two of this
chapter; and

(6) To temporarily fill a vacancy in a newly created
position prior to employment of a service personnel on a
regular basis under the procedure set forth in section eight-
b of this article.

Substitutes shall be assigned in the following manner: A
substitute with the greatest length of service time, that is,
from the date he began his assigned duties as a substitute in
that particular category of employment, shall be given
priority in accepting the assignment throughout the period
of the regular employee's absence or until the vacancy is
filled on a regular basis under the procedures set out in
section eight-b of this article. All substitutes shall be
employed on a rotating basis according to the length of their
service time until each substitute has had an opportunity to
perform similar assignments: Provided, That if there are
regular service employees employed in the same building or
working station as the absent employee and who are
employed in the same classification category of
employment, such regular employees shall be first offered
the opportunity to fill the position of the absent employee
on a rotating and seniority basis with the substitute then
filling the regular employee's position. A regular employee
assigned to fill the position of an absent employee shall be
given the opportunity to hold that position throughout such
absence.

The salary of a substitute 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 substitute service employee enters upon his
duties, he shall execute with the county board of education
an written contract as provided in section five, article two of this chapter.

Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

CHAPTER 71

(Com. Sub. for S. B. 184—By Mr. Davis, Mr. Holliday and Mr. Heck)

[Passed March 5, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-eight, relating to private, parochial or church schools, or schools of a religious order; policy; attendance; health and safety regulations; standardized testing requirements; participation in state programs; notice of intent to operate and terminate; requirements exclusive.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter eighteen be further amended by adding thereto a new article, designated article twenty-eight, all to read as follows:

CHAPTER 18. EDUCATION.

Article

8. Compulsory School Attendance.

28. Private, Parochial or Church Schools, or Schools of Religious Order.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory school attendance; exemptions.

1 Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday.

3 Exemption from the foregoing requirements of
compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school.—Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years;

Exemption B. Instruction in home or other approved place.—Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons giving the instruction, upon request of the county superintendent, to furnish to the county board of education, such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years receiving such instruction;

Exemption C. Physical or mental incapacity.—Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse shall be required under the provisions of this article: Provided, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;
Exemption D. Residence more than two miles from school or school bus route.—The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils, whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions.—Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation.—Such exemption shall consist of regular graduation from a standard senior high school;

Exemption G. Granting work permits.—The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: Provided, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

Exemption H. Serious illness or death in the immediate family of the pupil.—It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;

Exemption I. Destitution in the home.—Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable
effort that may properly be taken on the part of both school
and public assistance authorities for the relief of home
condition officially recognized as being so destitute as to
deprive children of the privilege of school attendance.
Exemption for this cause shall not be allowed when such
destitution is relieved through public or private means;

Exemption J. Church ordinances; observances of
regular church ordinances.—The county board of education
may approve exemption for religious instruction upon
written request of the person having legal or actual charge
of a child or children: Provided, That such exemption
shall be subject to the rules and regulations prescribed
by the county superintendent and approved by the county
board of education;

Exemption K. Alternative private, parochial, church or
religious school instruction.—In lieu of the provisions of
Exemption A hereinabove, exemption shall be made for any
child attending any private school, parochial school, church
school, school operated by a religious order, or other
nonpublic school which elects to comply with the
provisions of article twenty-eight, chapter eighteen of the
code of West Virginia.

The completion of the eighth grade shall not exempt any
child under sixteen years of age from the compulsory
attendance provision of this article: Provided, That there is
a public high school or other public school of advanced
grades or a school bus providing free transportation to any
such school the route of which is within two miles of the
child's home by the shortest practicable route or path as
hereinbefore specified under Exemption D of this section.

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR
SCHOOLS OF A RELIGIOUS ORDER.

§18-28-1. Policy.
§18-28-2. Attendance; health and safety regulations.
§18-28-3. Standardized testing requirements.
§18-28-4. Voluntary participation in state programs.
§18-28-5. New school notice requirements; termination.
§18-28-6. Requirements exclusive.

§18-28-1. Policy.
1 In conformity with the constitutions of the United States
and of West Virginia, it is the public policy of the state in matters of education that no human authority shall, in any case whatever, control or interfere with the rights of conscience or with religious liberty and that no person shall be enforced, restrained, molested or burdened, in body or goods, or otherwise suffer, on account of his or her religious opinions or belief, but all people shall be free to profess, and by argument, to maintain their opinions in matters of religion; and further be free to select their religious instructor, and to make for his or her support, such private contract as they shall please, and that religion, morality and knowledge being necessary to good government and the happiness of humankind, the means of education shall forever be encouraged.

§18-28-2. Attendance; health and safety regulations.

Each private, parochial or church school or school of a religious order shall observe a minimum instructional term of one hundred eighty days, with an average of five hours of instruction per day, and shall make and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Such attendance records shall be made available to the parents or legal guardians. Upon the request of the county superintendent of schools, any school to which this applies (or a parents organization composed of the parents or guardians of children enrolled in said school) shall furnish to the county board of education a list of the names and addresses of all children enrolled in such school between the ages of seven and sixteen years. Attendance by a child at any school to which this article relates and which complies with this article shall satisfy the requirements of compulsory school attendance. Each such school shall be subject to reasonable fire, health and safety inspections by state, county and municipal authorities as required by law, and shall further be required to comply with the West Virginia school bus safety regulations.

§18-28-3. Standardized testing requirements.

Each private, parochial or church school or school of a religious order or other nonpublic school electing to operate under this statute in lieu of the approval requirements set forth as part of section one, article eight, chapter eighteen,
5 Exemption A shall administer on an annual basis during each school year to every child enrolled therein between the ages of seven and sixteen years either the Comprehensive Test of Basic Skills, the California Achievement Test or the Stanford Achievement Test, which test will be selected by the chief administrative officer of each school in the subjects of English, grammar, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test.

15 Each child’s testing results and the school composite test results shall be made available to such child’s parents or legal guardians. Upon request of a duly authorized representative of the West Virginia department of education, the school composite test results shall be furnished by the school or by a parents organization composed of the parents or guardians of children enrolled in said school to the state superintendent of schools.

23 Each school to which this article applies shall:

(a) Establish curriculum objectives, the attainment of which will enable students to develop the potential for becoming literate citizens.

(b) Provide an instructional program that will make possible the acquisition of competencies necessary to become a literate citizen.

30 If such school composite test results for any single year for English, grammar, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, the school as herein described shall initiate a remedial program to foster achievement above that level. If after two consecutive calendar years, school composite test results are not above the fortieth percentile level, attendance at the school may no longer satisfy the compulsory school attendance requirement exemption of Exemption K, section one, article eight, chapter eighteen, until such time as the percentile standards herein set forth are met.

§18-28-4. Voluntary participation in state programs.

1 Any private, parochial or church school or school of a religious order or other nonpublic school complying with
the provisions of this article may, on a voluntary basis, participate in any state operated or state sponsored program otherwise made available to such schools by law.

§18-28-5. New school notice requirements; termination.

Any new school to which this article relates shall send to the state superintendent of schools of the state of West Virginia a notice of intent to operate, name and address of the school, and name of the school's chief administrator.

Any school to which this article applies shall notify the state superintendent of schools of the state of West Virginia upon termination.

§18-28-6. Requirements exclusive.

No private, parochial or church school or school operated by any other religious group or body as part of its religious ministry or other nonpublic school which complies with the requirements of this article shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization.

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CHAPTER 72

(S. B. 20—By Mr. Palumbo)

[Passed March 11, 1983: in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and nine, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance; increasing the minimum fine from three to five dollars and the maximum fine from twenty to fifty dollars for persons convicted of violations; providing for the duties of county school attendance director and assistants; providing for initial notice which allows a ten-day period in which a parent, guardian or custodian is required to attend a personal conference with a school official concerning a child's absenteeism; providing for issuance and execution of warrants when violation
continues after initial notice; setting maximum time period for assignment of the case to a magistrate and for holding hearing; providing for advance notice of hearing to the defendant; and changing the term “justice of the peace” to “magistrate.”

Be it enacted by the Legislature of West Virginia:

That sections two, four and nine, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-2. Offenses; penalties; cost of prosecution.

Any person who, after due notice has been served upon him as hereinafter provided, shall fail to cause a child or children in his legal or actual charge to attend school as hereinbefore provided, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than five nor more than fifty dollars together with the costs of prosecution, or confined in jail not less than five nor more than twenty days. Every day a child is out of school contrary to the provisions of this article shall constitute a separate offense. Magistrates shall have jurisdiction of offenses under this section.

Whenever a person accused of violating any of the provisions of this article has been tried and acquitted, the cost of prosecution shall be paid by the county board of education out of the maintenance fund of the county.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

The county attendance director and his assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age as defined under this article, and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils
which result in absences from school even though not clearly in violation of law.

If it is found that absence from school is in violation of law, the attendance director or assistant, in the case of first offense that school year, shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of such notice the parent, guardian or custodian, accompanied by the child if possible, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a magistrate of the county: Provided, That for a subsequent offense in any school year no such notice shall be required. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the arrest of the accused shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may be issued on the same complaint. The warrant shall be executed within ten days of its issuance or as soon thereafter as the accused can be found.

The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court clerk as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child,
stating age of such child. The county attendance director or
assistant shall, in the performance of his duties, have
authority to take without warrant any child absent from
school in violation of the provisions of this article and to
place such child in the school in which such child is or
should be enrolled.

The county attendance director shall devote full time to
his duties as a school official and shall be responsible under
direction of the county superintendent for the efficient
administration of school attendance in his county. In
addition to those duties directly relating to the
administration of attendance, the county attendance
director and assistant directors shall also perform the
following duties:

(a) Assist in directing the taking of the school census to
see that it is taken at the time and in the manner provided by
law;

(b) Advise with principals and teachers on the
comparison of school census and enrollment for the
detection of possible nonenrollees;

(c) Cooperate with existing state and federal agencies
charged with enforcement of child labor laws;

(d) Prepare a report for submission by the county
superintendent to the state superintendent of schools on
school attendance, at such times and in such detail as may
be required; also, file with the county superintendent and
county board of education at the close of each month a
report showing activities of the school attendance office
and the status of attendance in the county at the time;

(e) Promote attendance in the county by the compilation
of data for schools and by furnishing suggestions and
recommendations for publication through school bulletins
and the press, or for such purposes as the county
superintendent may direct;

(f) Participate in school functions such as parent-
teacher associations, civic meetings, club meetings, and
teachers' conferences;
85  (g) Assist in such other ways as the county
86  superintendent may direct for improving school
87  attendance.

1  All fines collected under the provisions of this article
2  shall be paid on or before the last day of each calendar
3  month by the magistrate, or other proper official having
4  jurisdiction in the case, to the sheriff and by him credited to
5  the county school fund; and the magistrate shall file with
6  the county superintendent on the last day of each month an
7  itemized statement of all fines paid over to the sheriff.

CHAPTER 73
(Com. Sub. for H. B. 1875—By Mr. Givens)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]
said medical center; authorizing acceptance of federal and private assistance; specifying that bonds and notes issued are not a debt of nor pledge of faith and credit of the state, any county, municipality or political subdivision; providing for bonds and notes, after issuance, to be negotiable instruments and to be exempt from taxation by the state, any county, municipality, political subdivision or agency thereof, with exception; providing for severability and interpretation of sections of the act; and effective date.

Be it enacted by the Legislature of West Virginia:

That sections four-b and four-c, article eleven, 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 eighteen new sections, designated sections twenty-six through forty-three, inclusive, all to read as follows:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§ 18-11-4b. Authority to fix and collect fees and charges at medical center; disposition thereof.

§ 18-11-4c. Authority to lease portions of medical center to operate supply rooms at medical center; fixing, collection and disposition of charges.

§ 18-11-26. Definition of board; cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the West Virginia University medical center to be financed by revenue bonds or notes.

§ 18-11-27. Trustee for bondholders or noteholders, contents of trust agreement.

§ 18-11-28. Operation and control of fiscal affairs of West Virginia University medical center.

§ 18-11-29. Payment of principal of and premium, if any, and interest on bonds and notes from medical center revenue fund and other gross revenues derived from West Virginia University medical center; gross revenues not to include tuition fees.

§ 18-11-30. Enforcement of payment and validity of bonds and notes.

§ 18-11-31. Pledges, time, liens, recordation.

§ 18-11-32. Refunding bonds.

§ 18-11-33. Purchase and cancellation of bonds or notes.

§ 18-11-34. Federal and private assistance.

§ 18-11-35. Vested rights; impairment.

§ 18-11-36. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.
§18-11-4b. Authority to fix and collect fees and charges at medical center; disposition thereof.

The West Virginia board of regents shall have authority to collect from patients at the West Virginia University medical center such hospital, clinic, laboratory and other fees and charges as may be fixed by the board of regents from time to time. All such fees and charges collected at the medical center exclusive of physician and dentist fees shall be paid into a medical center revenue fund, which is hereby created in the state treasury, and shall be used solely for the construction, maintenance and operation of the medical center, including the payment of the principal of and premium, if any, and interest on revenue bonds and notes issued by the board of regents for the purpose of financing the cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the buildings and other physical facilities of said medical center.

§18-11-4c. Authority to lease portions of medical center to operate supply rooms at medical center; fixing, collection and disposition of charges.

The West Virginia board of regents shall have authority to lease, as lessor, to any person for purposes directly associated with public educational or patient services, any portion of the West Virginia University medical center and to operate at the medical center supply rooms for the sale or rental of equipment to patients, students, faculty and university departments and for the furnishing to patients, students, faculty and university departments, medical, dental and pharmaceutical supplies and laundry and other services. The board of regents shall have authority to fix the terms of any such lease or rental agreements and the prices and charges to be collected for such lease of any such portion of the medical center or the sale,
rental or furnishing of any such equipment, supplies and services. All moneys collected under the authority of this section shall be paid into the medical center revenue fund heretofore created in the state treasury under the provisions of section four-b of this article and shall be used solely for the construction, maintenance and operation of the medical center, including the payment of the principal of and premium, if any, and interest on revenue bonds and notes issued by the board of regents for the purpose of financing the cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the buildings and other physical facilities of said medical center.

§18-11-26. Definition of board; cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the West Virginia University medical center to be financed by revenue bonds or notes.

1 (1) Notwithstanding the provisions of section one, article one of this chapter, the word “board,” when used in sections twenty-six through forty-two, inclusive, of this article, means the West Virginia board of regents.

2 (2) For the purpose of financing the cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the buildings or other physical facilities of the West Virginia University medical center, the board periodically may issue negotiable bonds or notes of the state in a principal amount which, in the opinion of the board, shall be necessary to finance said costs, and the proceeds of the issuance of any such bonds or notes shall be expendable after appropriation thereof by the Legislature. Such cost shall include, but not be limited to, the following: The cost of such acquisition, construction, reconstruction, remodeling, repair, improvement, extension, equipment or furnishing; studies and surveys; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; interest and carrying charges prior to, during and for six months after completion of such acquisition, construction, reconstruction, remodeling, repair, improvement, extension,
equipment or furnishing; the costs of issuing the bonds or notes; and a reasonable reserve for payment of the principal of and interest on the bonds or notes.

(3) The board periodically may issue renewal notes of the state, may issue revenue bonds of the state to pay notes and, if it considers refunding expedient, may refund or re-fund in advance bonds issued by the board by the issuance of new bonds of the state, pursuant to the requirements of section thirty-two of this article.

(4) Except as may otherwise be expressly provided by the board, every issue of bonds or notes by it shall be special obligations of the state, payable solely from the revenues or other moneys pledged therefor.

(5) The bonds and the notes shall be authorized by resolution of the board, shall bear such date and shall mature at such time or times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding forty years from the date of issue, as such resolution may provide. The bonds and notes 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 payable in such medium of payment and at such place and be subject to such terms of redemption as the board may authorize. The bonds and notes may be sold by the board in the manner and at or not less than the price the board determines. The bonds and notes shall be executed by the governor and the president of the board, both of whom may use facsimile signatures. The great seal of the state or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary of state, and any coupons attached thereto shall bear the manual or facsimile signature of the president of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery; and, in case the seal of the state
has been changed after a facsimile has been imprinted on
such bonds or notes, such facsimile seal will continue to be
sufficient for all purposes.

(6) A resolution authorizing bonds or notes or an issue of
bonds or notes under sections twenty-six through forty-two,
inclusive, of this article, may contain provisions, which shall
be a part of the contract with the holders of the bonds or
notes, as to any or all of the following:

(a) Pledging and creating a lien on all or any portion of
the moneys from time to time on deposit in the medical center
revenue fund, heretofore created by section four-b of this
article, to secure the payment of the bonds or notes or of any
issue of bonds or notes, subject to those agreements with
bondholders or noteholders which then exist;

(b) Pledging and creating a lien on any loan, grant or con-
tribution to be received from the federal, state or local govern-
ment or other source;

(c) The use and disposition of the moneys on deposit in
the medical center revenue fund and any other gross revenues
derived from the medical center;

(d) The setting aside of reserves or sinking funds and the
regulation and disposition thereof;

(e) Limitations on the purpose to which the proceeds of
sale of bonds or notes may be applied and pledging the pro-
ceeds to secure the payment of the bonds or notes or of any
issue of the bonds or notes;

(f) Limitations on the issuance of additional bonds or notes
and the terms upon which additional bonds or notes may be
issued and secured;

(g) The procedure by which the terms of a contract with
the bondholders or noteholders may be amended or abrogated,
the amount of bonds or notes the holders of which must con-
sent thereto and the manner in which the consent may be
given; and

(h) Vesting in a trustee or trustees the property, rights,
powers, remedies and duties which the board considers necessary or convenient.

(7) Prior to the preparation of definitive bonds or notes, the board may under like restrictions issue temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes, as the case may be, upon the issuance of the latter.

§18-11-27. Trustee for bondholders or noteholders; contents of trust agreement.

In the discretion of the board, any bonds, refunding bonds or notes issued by the board may be secured by a trust agreement between the board and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without the state. Any such trust agreement may contain provisions as set forth in section twenty-six of this article with respect to the resolution. All expenses incurred in carrying out such agreement may be treated as a part of the cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the buildings or other physical facilities of the West Virginia University medical center affected by the agreement.

§18-11-28. Operation and control of fiscal affairs of West Virginia University medical center.

The board shall properly maintain, repair, operate, manage and control the fiscal affairs of the West Virginia University medical center, fix the rates of rents, fees or charges and establish rules and regulations for the use and operation of the medical center, as provided by sections four-b through four-d, inclusive, of this article, and as otherwise required by this code or determined necessary by the board, and may make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers under sections twenty-six through forty-two, inclusive, of this article.
§18-11-29. Payment of principal of and premium, if any, and interest on bonds and notes from medical center revenue fund and other gross revenues derived from West Virginia University medical center; gross revenues not to include tuition fees.

Whenever bonds or notes are issued for acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the buildings or other physical facilities of the West Virginia University medical center, the board may pledge to the payment of the principal of and premium, if any, and interest on said bonds or notes all or any portion of the moneys from time to time on deposit in the medical center revenue fund heretofore created by section four-b of this article or of any other gross revenues derived from the medical center. For the purposes of sections twenty-six through forty-two, inclusive, of this article, gross revenues shall not include tuition fees collected at the West Virginia University medical center and disposed of pursuant to section four-d of this article.

§18-11-30. Enforcement of payment and validity of bonds and notes.

1. The provisions of sections twenty-six through forty-two, inclusive, of this article and any resolution or trust agreement shall continue in effect until the principal of and interest on the bonds or notes of the state issued by the board have been fully paid, and the duties of the board under said sections and any resolution or trust agreement shall be enforceable by any bondholder or noteholder by mandamus or other appropriate action in any court of competent jurisdiction.

2. The resolution authorizing the bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to sections twenty-six through forty-two, inclusive, of this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§18-11-31. Pledges, time, liens, recordation.

Any pledge made by the board shall be valid and binding from the time the pledge is made. The moneys so pledged and
thereafter paid into the medical center revenue fund or otherwise received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof.

§18-11-32. Refunding bonds.

Any bonds issued under the provisions of sections twenty-six through forty-two, inclusive, of this article and at any time outstanding may at any time and from time to time be refunded by the board by the issuance of refunding bonds of the state in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes authorized by said sections; and to pay any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this section shall be payable from the revenues out of which the bonds to be refunded thereby were payable, from other moneys or from the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in and shall be secured in accordance with sections twenty-six through forty-two, inclusive, of this article.

§18-11-33. Purchase and cancellation of bonds or notes.

The board, subject to such agreements with bondholders
or noteholders as may then exist, shall have the power, out
of any funds available therefor, to purchase bonds, including
refunding bonds, or notes of the state issued by the board.
If the bonds or notes 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 bonds or notes are not then redeemable, the price of
such purchase shall not exceed the redemption price applica-
able on the first date after such purchase upon which the
bonds or notes become subject to redemption plus accrued
interest to such date. Upon such purchase, such bonds or notes
shall be canceled.

§18-11-34. Federal and private assistance.

The board is authorized and empowered to accept loans or
grants or temporary advances for the purpose of paying part or
all of the cost of acquiring, constructing, reconstructing, re-
modeling, repairing, improving, extending, equipping or fur-
nishing the buildings or other physical facilities of the West
Virginia University medical center and the other purposes here-
in authorized from the United States of America or such
federal or public agency or department of the United States or
any private agency, corporation or individual, which temporary
advances may be repaid out of the proceeds of the bonds au-
thorized to be issued under the provisions of sections twenty-
six through forty-two, inclusive, of this article, and to enter
into the necessary contracts and agreements to carry out the
purposes hereof with the United States of America or such
federal or public agency or department of the United States or
with any private agency, corporation or individual.

§18-11-35. Vested rights; impairment.

The state pledges and agrees with the holders of any bonds
or notes issued under sections twenty-six through forty-two,
inclusive, of this article that the state will not limit or alter
the rights vested in the board to fulfill the terms of any agree-
ments made with the holders thereof, or in any way impair the
rights and remedies of the holders, until the bonds or notes,
together with the interest thereon, and all costs and expenses in
connection with any action or proceeding by or on behalf of
such holders, are fully met and discharged. The board is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

§18-11-36. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.

Bonds, refunding bonds and notes issued under the authority of sections twenty-six through forty-two, inclusive, of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of the state, and the holders and owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by said sections, unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under the authority of said sections, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by said sections. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of sections twenty-six through forty-two, inclusive, of this article shall be payable solely from funds provided under the authority of said sections. Said sections do not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or any other political subdivision thereof.

§18-11-37. Negotiability of bonds and notes.

Whether or not the bonds or notes are of such form or character as to be negotiable instruments under the uniform...
commercial code, the bonds or notes authorized to be issued by sections twenty-six through forty-two, inclusive, of this article are negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds or notes for registration.


The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, the bonds and notes of the state issued by the board are securities in which all public officers and bodies of this state, including the West Virginia state board of investments, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business (including domestic for life and domestic not for life insurance companies), all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are 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.


The exercise of the powers granted to the board by sections twenty-six through forty-two, inclusive, of this article will be in all respects for the benefit of the students and teachers of and patients at the West Virginia University medical center and the other people of the state, for the improvement of their health, safety, convenience and welfare, and is a public purpose. As the operation and maintenance of the West Virginia University medical center constitutes the performance of essential governmental functions, the board shall not be required to pay any taxes or assessments upon any property acquired or used by the board or upon the income therefrom. All bonds and notes of the state issued by the board, and all interest and income thereon, shall be exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.
§18-11-40. Sections and provisions severable.

Sections twenty-six through forty-two, inclusive, of this article, and the provisions and parts of said sections, are severable, and it is the intention to confer the whole or any part of the powers provided for in said sections, and if any of said sections or the provisions or parts of any of said sections, or the application thereof to any person or circumstance, are for any reason held unconstitutional or invalid, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

§18-11-41. Sections regarded as supplementary.

Sections twenty-six through forty-two, inclusive, of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws.

§18-11-42. Liberal construction.

Sections twenty-six through forty-two, inclusive, of this article, being necessary for the health, safety, convenience and welfare of the students and teachers of and the patients at the West Virginia University medical center and the other people of this state, shall be liberally construed to effectuate the purposes thereof.

§18-11-43. Effective date.

The provisions of sections four-b, four-c and sections twenty-six through forty-three of this article shall take effect as of the date of passage.

CHAPTER 74

(Com. Sub. for H. B. 1758—By Mrs. Spencer)

[Passed March 10, 1983; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to requiring county
boards of education to establish and maintain special education
programs for all exceptional children and including in that
requirement all children who, due to injury or other reason, are
homebound for a period of three weeks or more.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services
for exceptional children.

1 In accordance with the following provisions, county
2 boards of education throughout the state shall establish and
3 maintain for all exceptional children between five and twenty-
4 three years of age special educational programs, including,
5 but not limited to, special schools, classes, regular classroom
6 programs, home-teaching or visiting-teacher services for any
7 type or classification as the state board of education shall
8 approve. Provisions shall be made for educating exccept-
9 tional children (including the handicapped and the gifted)
10 who differ from the average or normal in physical, mental or
11 emotional characteristics, or in communicative or intellectual
12 deviation characteristics, or in both communicative and in-
13 tellectual deviation characteristics, to the extent that they
14 cannot be educated safely or profitably in the regular classes
15 of the public schools or to the extent that they need special
16 educational provisions within the regular classroom in order
17 to educate them in accordance with their capacities, limitations
18 and needs. In addition, county boards of education may
19 establish and maintain other educational services for excep-
20 tional children as the state superintendent of schools may
21 approve.

22 By the school year beginning on the first day of July,
23 one thousand nine hundred seventy-four, county boards
24 of education shall establish and maintain these special
25 educational programs, including, but not limited to, special
schools, classes, regular class programs, home-teaching or visiting-teacher services. After the first day of July, one thousand nine hundred eighty-three, the special education programs shall include home-teaching or visiting-teacher services for children who are homebound due to injury or who for any other reason as certified by a licensed physician are homebound for a period that has lasted or will last more than three weeks: Provided, That pupils receiving such homebound or visiting-teacher services shall not be included when computing adjusted enrollment as defined in section two, article nine-a, chapter eighteen of this code. The state board of education shall adopt rules and regulations to advance and accomplish this program and to assure that all exceptional children in the state, including children in mental health facilities, residential institutions and private schools, will receive an education in accordance with the mandates of state and federal laws.

Nothing in this section shall be construed to prevent county boards of education from providing special educational programs, including, but not limited to, special schools, classes, regular class programs, home-teaching or visiting-teacher services for such exceptional children who are three years of age or older.

CHAPTER 75
(Com. Sub. for S. B. 301—By Mr. Palumbo)

(Passed February 21, 1983; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to establishing faculty improvement fees; assessing fee against students; providing for collection and disposition of fees; and establishing guidelines for fee use.
Be it enacted by the Legislature of West Virginia:

That article twenty-four, 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 one-b, to read as follows:

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1b. Faculty improvement fee.

1 In addition to the fees specifically provided for in sections one and one-a of this article, all students enrolled for credit at the state's public colleges and universities shall pay a faculty improvement 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: Provided, That the fee for each class of students shall be uniform throughout the state and shall be no less than fifteen dollars per semester for residents and no less than fifty dollars per semester for out of state students. 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 provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education.

All faculty improvement fees collected shall be deposited in a special fund in the state treasury and shall be used as a faculty salary supplement. One half of the moneys shall be apportioned annually on an equitable basis to each full-time instructional faculty member, and the remaining one half of such moneys shall be used for merit raises exclusively for full-time instructional faculty members.

The board of regents shall, before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for each of its institutions.
AN ACT to amend and reenact sections two and three, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fee waivers for undergraduate, graduate and professional students; transferring the power to establish such fee waivers to the West Virginia board of regents; limiting the number thereof; setting forth their terms and conditions; and requiring that rules be promulgated and reports be submitted to legislative auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-2. Fee waivers—Undergraduate schools.

§18-24-3. Same—Professional and graduate schools.

§18-24-2. Fee waivers—Undergraduate schools.

1 The West Virginia board of regents may establish, from time to time, fee waivers for students in undergraduate studies entitling recipients to waiver of enrollment, tuition, registration, higher education resource and other fees subject to the following conditions and limitations:

6 (1) No state educational institution may have in effect at any time undergraduate fee waivers in a number which exceeds five percent of the number of full-time equivalent undergraduate students registered during the fall semester of the immediately preceding academic year.

11 (2) Each undergraduate fee waiver shall entitle the recipient thereof to attend a designated state educational institution without payment of the enrollment, tuition, registration, higher education resource and other fees as may be prescribed by the
board and be for a period of time not to exceed eight semesters of undergraduate study.

(3) The board shall make rules governing the award of undergraduate fee waivers, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of the fee waivers by the recipients and the rights and duties of the recipients in respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the board, and the board shall file with the legislative auditor a copy of the rules governing the award of the fee waivers and a list of the names of the recipients thereof.

§18-24-3. Same—Professional and graduate schools.

In addition to the fee waivers heretofore authorized for undergraduate study by the provisions of section two of this article, the West Virginia board of regents may establish from time to time fee waivers for study in graduate and professional schools, including medicine and dentistry, entitling the recipients to waiver of enrollment, tuition, registration, higher education resource and other fees, subject to the following conditions and limitations:

(1) West Virginia University may not have in effect at any time graduate and professional school fee waivers in a number which exceeds ten percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above ten percent, all graduate assistants employed by West Virginia University shall be granted a fee waiver. All other institutions of higher education may not have in effect at any time graduate and professional school fee waivers in a number which exceeds five percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the
above five percent, all graduate assistants employed by the
other institutions shall be granted a fee waiver.

(2) Each graduate or professional school fee waiver shall
entitle the recipient to waiver of the enrollment, tuition, regis-
tration, higher education resource and other fees as may be
prescribed by the board and be for a period of time not to
exceed the number of semesters normally required in the re-
cipient's academic discipline.

(3) The board shall make rules governing the award of
graduate and professional school fee waivers, the issuance and
cancellation of certificates entitling the recipients to the bene-
fits thereof, the use of the fee waivers by the recipients and the
rights and duties of the recipients in respect to the fee waivers.
These rules may not be inconsistent with the provisions of this
section.

(4) The awarding of graduate and professional school fee
waivers shall be entered in the minutes of the meeting of the
board, and the board shall file with the legislative auditor a
list of the names of the recipients thereof.

CHAPTER 77
(Com. Sub. for H. 8. 1097—By Mrs. Hartman)

[Passed March 4, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six and nine-c,
article twenty-six, chapter eighteen of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, re-
ating to the advisory council of classified employees; provid-
ing that the chairman of such council be an ex officio, voting
member of the West Virginia board of regents; amending sec-
tions relating to the board of regents to incorporate the new
voting member; and providing for at least one separate meeting
between the board and the advisory council of classified em-
ployees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-4. Composition of board; terms of members; qualifications of members.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18-26-6. Meetings; compensation of members.

§18-26-9c. Advisory council of classified employees.

§18-26-4. Composition of board; terms of members; qualifications of members.

The board shall consist of thirteen members, of whom one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote, one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote, one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote, and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of six years, except that three of the original appointments shall be for terms of two years, three of the original appointments shall be for terms of four years and three of the original appointments shall be for terms of six years.

Each of the members appointed to the board by the governor shall be especially qualified in the field of higher education by virtue of his knowledge, learning, experience or interest in the field.

Except for the ex officio members no person shall be eligible for appointment to membership on the board who is an officer, employee or member of an advisory board of any state college or university, or any officer or member of any political party executive committee, or the holder of any other public office or public employment under the federal government or under
the government of this state or any of its political subdivisions, 
or any appointee or employee of the board. Of the nine 
members appointed by the governor from the public at large, 
not more than five thereof shall belong to the same political 
party and at least two members of the board shall be appointed 
from each congressional district.

Except as provided in this section, no other person may 
be appointed to the board.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

The governor shall appoint nine members of the board to be 
appointed by him as soon after the effective date of this 
article as is practicable, and the original terms of the nine 
members appointed by the governor and of the one member, 
who is such by virtue of being the state superintendent of 
schools, shall commence on July one, one thousand nine hun-
dred sixty-nine. The chairman of the advisory council of 
students, ex officio, the chairman of the advisory council of 
faculty, ex officio, and the chairman of the advisory council 
of classified employees, ex officio, shall serve the terms for 
which they were elected by their respective advisory councils; 
these members shall be eligible to succeed themselves. All 
members of the board of regents serving as of the effective 
date of this enactment shall continue to serve until the end of 
their term as provided for above.

The governor shall appoint a member to fill any vacancy 
among the nine members of the board appointed by the gov-
ernor, by and with the advice and consent of the Senate, which 
member appointed to fill such vacancy shall serve for the 
unexpired term of the vacating member. The governor shall 
fill the vacancy within sixty days of the occurrence of the 
vacancy.

All members of the board appointed by the governor shall 
be eligible for reappointment. A person who has served as a 
member during all or any part of two consecutive terms 
shall be ineligible to serve as a member for a period of three
years immediately following the second of the two consecutive terms.

Before exercising any authority or performing any duties as a member of the board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section 5, article IV of the state constitution, the certificate whereof shall be filed with the secretary of state.

No member of the board appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of the state elective officers.

§18-26-6. Meetings; compensation of members.

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 the advisory council of faculty, the advisory council of students, and the advisory council of classified employees, 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.

Of the thirteen members, seven 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.

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.

§18-26-9c. Advisory council of classified employees.

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 for 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: Provided, That beginning with the month of April, one thousand nine hundred eighty-three, and annually thereafter, the president or administrative head, at the direction of the council and in accordance with procedures and policies established by them, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the advisory council. 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, who shall be by virtue of his office a voting member of the West Virginia board of regents. 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 executive personnel.

CHAPTER 78

S.B. 368—By Mr. Holliday

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-b, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the advisory council of students; removing the requirement that a student must be a West Virginia resident to be eligible to be the chairman of the advisory council of students; and providing that the student must be entitled to vote in the state of West Virginia prior to being elected chairman.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-9b. Advisory council of students.

1 The student government organization at each state college, community college, including Potomac State College of West Virginia University, and university shall elect a student who may be the elected head, or president, of such organization, to serve on the advisory council of students which is hereby created, consisting of the elected representatives of each such college or 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.

10 The advisory council of students shall meet at least once each quarter, and shall meet during each month of June, at which meeting the council shall elect a chairman, who prior to such election must be entitled to vote in the state of West Virginia. By virtue of the office, the chairman shall be a voting member of the West Virginia board of regents. 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.

27 The advisory council of students, 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 students of the 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 student in this state's colleges and universities.

CHAPTER 79
(Com. Sub. for S. B. 520—By Mr. Cook)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to seniority rights for full-time nonprofessional classified personnel employed by the board of regents; defining certain terms; specifying requirements for determining seniority; requiring that seniority be observed in temporary furloughs and permanent terminations; requiring that a recall list be kept by each institution controlled by the board of regents; providing that listings be renewed annually; and requiring notification of all listed persons prior to filling vacancies.

Be it enacted by the Legislature of West Virginia:

That article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-seven, to read as follows:
ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-27. Definitions; requirements for determining seniority for full-time nonprofessional classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 All decisions by the board of regents or its agents in institutions of higher learning concerning reductions in work force of full-time nonprofessional classified personnel, whether by temporary furlough or permanent termination, shall be made on the basis of seniority, as hereinafter provided:

(a) As used in this section:

(1) “Employee” means any full-time nonprofessional classified employee.

(2) “Full-time nonprofessional classified employee” means an employee of the board of regents at any institution under its control:

(i) Who holds a job title that, under the rules and regulations of the board of regents, is considered classified and is subject to the minimum wage and maximum hours standards of article five-c, chapter twenty-one of this code;

(ii) Whose job title or position is delineated in a current, authorized state expenditure schedule; and

(iii) Whose employment is on a regular basis and if continued shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year.

(3) “Job title” means the name of a position or job held by an employee.

(4) “Job classification” means a grouping of job titles with the same name without regard to their numerical designations, or any job title for which there is no related title of the same name.
(5) "Grade of classification" means a job title or position with its numerical designation which distinguishes it from other titles in the same classification.

(b) The seniority of any full-time nonprofessional classified employee shall be determined on the basis of the length of time the employee has been employed by the board of regents or its agents in institutions of higher learning within a particular job classification. For the purpose 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. If an institution is 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 classifications 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 institution if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification.

(c) 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 institution.

(d) Any employee whose seniority with the institution is insufficient to allow his retention by the institution during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of his termination or furlough, or from the date of his most recent renewal. If an employee fails to renew his listing with the institution, his name may be removed from the list. An employee placed upon the preferred list shall be
recalled to any position opening by the institution within the classification (s) in which he had previously been employed, or to any lateral position for which the employee is qualified.

(e) An employee on the preferred recall list shall not forfeit his right to recall by the institution if compelling reasons require such employee to refuse an offer of re-employment by the institution.

(f) The institution shall be required to notify all employees maintaining active listings 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 employee listed to notify the institution of any change in his address and to timely renew his listing with the institution.

(g) No position openings may be filled by the institution, 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 reemployment.

CHAPTER 80

(Com. Sub. for S. B. 172—By Mr. Nelson, Mr. Holliday, Mrs. Spears, Mr. Boettner, Mr. Heck, Mr. Palumbo, Mr. Burdette, Mr. Jones and Mr. Tonkovich)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the establishment and operation by the board of regents of a state autism training center; purpose; definitions; powers and duties of board of regents; rules and regulations; advisory board; trainee team fees and expenses.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. STATE AUTISM TRAINING CENTER.

§18-26A-1. Purpose.
§18-26A-4. Responsibilities of center.
§18-26A-6. Advisory board.
§18-26A-7. Trainee team; expense.

§18-26A-1. Purpose.

The purpose of the Legislature in the enactment of this article is to establish and develop an autism training center in the state of West Virginia with a highly skilled, interdisciplinary, appropriately experienced staff which will train teachers, parents, guardians and others important to the autistic person's education and training. The center shall be established and operated by the West Virginia board of regents or its designees.


For the purpose of this article:

"Board" means the West Virginia board of regents; and

"Center" means the autism training center.


The West Virginia board of regents is authorized to operate a state autism training center, including either the acquisition by purchase, lease, gift or otherwise of necessary lands, and the construction of necessary buildings; the expansion, remodeling, altering or equipping of necessary buildings; or the making of contracts by the board of regents with any state, county or municipal agency, or nonprofit institution, providing for the equipment, compensation of personnel, operation and main-
tenance of any facility of such agency or institution utilized for the purposes of this article. The board may make and enter into all contracts and agreements necessary and incidental to the performance of its powers and duties under this section, and may cooperate with other agencies of the state, county and federal governments.

§18-26A-4. Responsibilities of center.

This center is required to work with trainee teams consisting of the autistic or autistic-like individual, a parent or guardian and a teacher or related professional, preferably one who is already involved in the autistic person’s education and training, who have been accepted by the center. The training shall be specific to the autistic individual and shall occur during an intensive three-week training course. The trainee team shall live at a special residence with trained house parents and go daily to the center. After the team has returned to its community, the center shall offer intensive follow-up services including toll-free telephone and consultation services. The center shall offer appropriate educational programs for autistic persons and appropriate training for professional personnel and parents.


The board shall make and adopt rules, regulations and standards for the establishment, operation, maintenance and government control of the center established pursuant to this article including such rules, regulations and standards as may be necessary for cooperation under and compliance with any existing or future federal statutes pertaining to grants-in-aid for autistic training or facilities and such other rules and regulations as may be necessary to effectuate the purposes of this article.

§18-26A-6. Advisory board.

The board of regents shall appoint a board of West Virginia citizens to advise the center director on matters of policy. The board shall be composed of fifty percent parents or guardians of persons eligible for the center’s program; forty percent persons from professional fields
related to autism, such as special education, psychology, hearing and speech, neurology and pediatrics; and ten percent knowledgeable lay citizens such as legislators or other lay community leaders. The director of the center shall be a voting member of the advisory board.

§18-26A-7. Trainee team; expense.

A trainee team eligible to attend the center consists of a diagnosed autistic or autistic-like individual, a professional chosen by the primary local service agency and the individual's parent or guardian.

The center shall charge agencies sending trainee teams such fees as are established by the board of regents.

For the first five years of the existence of the center, the center shall provide for all expenses in excess of fees charged sending agencies for each trainee team including child care for other children of attending parents, guardians, teachers or other professionals not regularly employed at the center. After this five-year development period, expenses of the trainee team will be charged to the sending agencies.

CHAPTER 81

(Com. Sub. for S. B. 256—By Mr. Heck, Mr. Rogers and Mr. Holliday)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment of school service personnel by county boards of education; and establishing a form for a written contract of employment for school personnel.

Be it enacted by the Legislature of West Virginia:

That section five, 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-2-5. Employment of service personnel.

The board is authorized to employ such service personnel, including substitutes, 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 shall be in the following form:

COUNTY BOARD OF EDUCATION

SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered into this ....... day of ............, 19........, by and between THE BOARD OF EDUCATION OF THE COUNTY OF ................., a corporation, hereinafter called the "Board," and (Name of Employee), of (Mailing Address), hereinafter called the "Employee."

WITNESSETH, that whereas, at a lawful meeting of the Board of Education of the County of .................. held at the offices of said Board, in the City of ......................, County, West Virginia, on the ....... day of ....... ..........., 19........, the Employee was duly hired and appointed for employment as a (Job Classification) at (Place of Assignment) for the school year commencing ............ for the employment term and at the salary and upon the terms hereinafter set out.

Now, THEREFORE, pursuant to said employment, Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job Classification) at (Place of Assignment) for the school year or remaining part thereof commencing ............, 19........ The period of employment is ............ days at an annual salary of $............ at the rate of $............ per month.

(2) The Board hereby certifies that the Employee's employment has been duly approved by the Board and will be a matter of the Board's minute records.
35 (3) The services to be performed by the Employee shall be such services as are prescribed for the job classification set out above in paragraph (1) and as defined in Section 8, Article 4, Chapter 18A of the Code of West Virginia, as amended.

36 (4) The Employee may be dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty pursuant to the provisions of Section 8, Article 2, Chapter 18A of the Code of West Virginia, as amended.

37 (5) The Superintendent of the County Board of Education, subject to the approval of the Board, may transfer and assign the Employee in the manner provided by Section 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

38 (6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

39 (7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

40 (8) This contract must be signed and returned to the Board at its address of ________________ within thirty days after being received by the Employee.

41 (9) By signing this contract the Employee accepts employment upon the terms herein set out.

42 Witness the following signatures as of the day, month and year first above written:

43 ___________ , (President, __________ County Board of Education)

44 ___________ , (Secretary, __________ County Board of Education)

45 ___________ , (Employee)

46 The use of this form shall not be interpreted to authorize boards to discontinue any employee's contract status with the board or rescind any rights, privileges or benefits held under contract or otherwise by any employee prior to the effective date of this section.
Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within thirty days after receipt 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 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.

CHAPTER 82

(Com. Sub. for H. B. 1204—By Mr. Faircloth)

[Passed March 10, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact 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-c, relating to seniority rights for professional and service personnel employed by multi-county vocational centers.

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-c, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8c. Seniority rights for personnel employed by multi-county vocational centers.

1 Professional and service personnel employed by a multi-county vocational center shall establish seniority on the basis
of the length of time the employee has been employed by
the multi-county vocational center, except that any pro-
fessional or service personnel whose employment with the
multi-county vocational center was immediately preceded by
employment with one of the county boards participating in
the operation of the center or whose employment contract
was with one of the county boards participating in the
operation of the center (1) shall retain any seniority accrued
during employment by said county board; (2) shall accrue
seniority as a regular employee with said county board
during employment with the center; (3) shall attain con-
tinuing contract status with both the county and the center
if the sum of the years employed by the county and the center
equals the statutory number required for continuing contract
status; and (4) shall retain and continue to accrue county
and center seniority in the event of reemployment by said
participating county as a result of direct transfer from the
center or recall from the preferred list.

Reductions in work force in the center or employment
by the center or county board shall be made on the basis
of seniority in accordance with section eight-b of this article:
Provided, That only years of employment within the multi-
county vocational center shall be considered for purposes of
reduction in force within the center.

The seniority conferred herein shall apply retroactively to
all affected professional and service personnel, but the rights
incidental thereto shall commence as of the effective date of
this section.

CHAPTER 83
(Com. Sub. for H. B. 1039—By Mrs. Rogers and Mr. Whitlow)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter
eighteen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authority, rights
and responsibilities of school personnel; authority of school principals to administer corporal punishment; requiring the state board of education and county boards of education to adopt rules and regulations regarding corporal punishment; governing and permitting the administration of corporal punishment by open hand and paddle; and limiting imposition of corporal punishment.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; authority of principals to administer corporal punishment.

The teacher shall stand in the place of the parent or guardian in exercising authority over the school, and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school. Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer, or medical inspector, of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases, or has presented a certificate of health signed by the medical inspector or other proper health officer. The teacher shall have authority to suspend any pupil guilty of disorderly, refractory, indecent or immoral conduct, and the district board of education may
expel or exclude any such pupil if, on investigation, the
close of such pupil is found to be detrimental to the
progress and the general conduct of the school.

The principal shall have the authority to administer moderate corporal punishment by means of the open hand or a paddle subject to the following restrictions:

(1) Corporal punishment should be administered only as a last resort after use of alternative methods of discipline have failed to correct the inappropriate pupil behavior;

(2) Pupils are informed of the rules and regulations that govern the school;

(3) The pupil is informed of the school rule or rules allegedly violated and is given an opportunity to explain his or her behavior prior to the administration of corporal punishment;

(4) Punishment is administered without anger or malice. The amount of physical force used is not wanton or in excess of the offense, is suitable to the pupil's age and mental and physical conditions and is applied without discrimination;

(5) The punishment is administered by the school principal or by a specific designee authorized by the principal to administer such punishment and in either case in the presence of another adult professional employee and not in the presence of another pupil;

(6) The punishment is administered by use of the open hand or a paddle to the buttocks;

(7) A report which includes a description of the pupil's conduct prompting the use of corporal punishment and the name of the witness is attempted to be made informally by telephone or notice sent with the child to the parent or guardian at least twelve hours prior to administration of the corporal punishment and is made orally in the school office by the end of the school day and a written report is filed in the school office within twenty-four hours of the incident;
(8) The parent or guardian of the pupil is notified in writing of each instance of corporal punishment within three school days;

(9) Each school principal shall be responsible for the maintenance of discipline in his school;

(10) Corporal punishment shall not be administered to a pupil: (a) Identified as handicapped, learning, hearing, mentally or behaviorally disabled; or (b) whose parent has petitioned in writing to the school principal that corporal punishment not be administered to the pupil and attached a certificate from a physician that by reason of a physical or emotional condition the pupil should not be subjected to corporal punishment; or (c) if medical information available to school authorities indicates that the pupil should not be subjected to corporal punishment.

The West Virginia board of education and county boards of education shall adopt policies consistent with the provisions of this section encouraging the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parents and guardians in the maintenance of school discipline.

For the purpose of this section: (1) "Pupil" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That in the case of adults the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; (2) "teacher" shall mean all professional educators as defined in section one, article one, chapter eighteen-a of this code and shall include the driver of a school bus or other mode of transportation.

Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen.
CHAPTER 84
(Com. Sub. for H. B. 1189—By Mr. Givens and Mr. Yenni)

[Passed March 12, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the payment of salary to school board employees who are subpoenaed as witnesses in any criminal proceeding in any court of law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-3a. Answering witness subpoenas.

1 Any teacher, principal, supervisor, service personnel or other person employed by a board of education who is subpoenaed to appear as a witness but not as a defendant in any criminal proceeding in any court of law may make such appearance without any loss of pay. The board shall pay to such employee the difference between the witness fee, exclusive of travel allowances, payable for such appearance by the court and the amount of salary due to the person for the time such employee is absent from his employment by reason of answering such subpoena.

CHAPTER 85
(Com. Sub. for H. B. 1034—By Mrs. Hartman and Mr. Sattes)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three-b, 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 four, relating to the offense of trespass on student residence premises or student facility premises of an institution of higher education; defining certain terms; describing circumstances under which a person may be asked to leave a residence hall or student facility; describing the misdemeanor offense of remaining in a residence hall or student facility and establishing a penalty therefor; and prescribing a rule of construction.

Be it enacted by the Legislature of West Virginia:

That article three-b, 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 four, to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

(a) For the purposes of this section:

(1) “Residence hall” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education.

(2) “Student facility” means a facility owned, operated or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold or served to students enrolled at such institution, but shall not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(3) “Institution of higher education” means any state university, state college or state community college under the control, supervision and management of the West Virginia board of regents, or any other university, college or any other institution of higher education in the state subject to rules and regulations for accreditation under the provisions of section thirteen-a, article twenty-six, chapter eighteen of this code.

(4) “Person authorized to have access to a residence hall or student facility” means:
(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by his employment by such institution to be in the residence hall or student facility and who is acting within the scope of his employment; or

(E) A delivery man, repairman or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who is acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by his presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility he may be asked to leave such residence hall or student facility. If a person other than a person authorized to have access to a residence hall or student facility enters such a residence hall or student facility, he may be asked to leave such residence hall or student facility notwithstanding the fact that he has not interfered with the peaceful or orderly operation of such residence hall or student facility or otherwise committed a breach of the peace or violated any statute or ordinance. Such request to leave may be made by the president of the institution of higher education, an employee designated by the president to maintain order in the residence hall or student facility, a security officer appointed pursuant to the provisions of section eight-a, article twenty-six, chapter eighteen of this code, or a municipal police officer, a sheriff or deputy sheriff, or a member of the department of public safety.

(c) It shall be unlawful for a person to remain in a residence hall or student facility after being asked to leave as provided for in subsection (b) of this section.
CHAPTER 86
(Com. Sub. for S. B. 127—By Mr. Nelson)

[Passed February 17, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and five, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia educational broadcasting authority; increasing the number of members; staggering the terms of appointees; prohibiting appointment of noncommercial broadcasting employees; requiring that at least one appointee be chosen from each congressional district; allowing annual meeting to be held other than in July and deleting requirement for additional meetings; changing "executive secretary" to "executive director" and "chairman" to "chairperson"; allowing the chairperson to request resignation of member absent under certain circumstances; providing for use of audio-video microwave network; and allowing proceeds from contracts with commercial entities to be used for noncommercial purposes.

Be it enacted by the Legislature of West Virginia:

That sections two, three and five, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

The West Virginia educational broadcasting authority, heretofore created, is hereby continued as a public benefit corporation. It shall consist of eleven voting members, who shall be residents of the state, of whom one shall be the state superintendent of schools, one shall be a member of the West Virginia board of education to be selected by it annually, one shall be the chancellor of the West Virginia board of regents and one shall be a member of the West Virginia board of regents to be selected by it annually. The other seven members shall be appointed by the governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year, except that the appointment to fill the membership position for the term expiring in the year one thousand nine hundred eighty-three, shall be for a term of six years. Not less than one appointive member shall come from each congressional district. Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the authority. The present members of the authority shall continue to serve out the terms to which they were appointed. Any vacancy among the appointive members shall be filled by the governor by appointment for the unexpired term.

The chairperson and vice chairperson of the authority as of the effective date of this section shall continue in their respective offices until their successors are elected. Thereafter, at its annual meeting in each year the authority shall elect one of its members as chairperson and one as vice chairperson. The authority is authorized to select an executive director and such other personnel as may be necessary to perform its duties and to fix the compensation of such personnel to be paid out of moneys appropriated for this purpose. The executive director shall keep a record of the proceedings of the authority and shall perform such
other duties as it may prescribe. The authority is authorized
to establish such office or offices as may be necessary for the
proper performance of its duties.

The authority shall hold an annual meeting and may meet
at such other times and places as may be necessary, such
meetings to be held upon its own resolution or at the call of
the chairperson of the authority. The members shall serve
without compensation but may be reimbursed for actual
expenses incident to the performance of their duties upon
presentation to the chairperson of an itemized sworn
statement thereof.


The authority shall have the power:

1. To act as advisor and consultant to television and
   radio stations concerning noncommercial educational
   programs supported by federal, state, county, city or
   private funds.

2. To cooperate with and assist all local and state
   educational institutions in planning and development of
   the use of educational radio, television and related media.

3. To promote and coordinate the use of these media for
   noncommercial educational purposes.

4. To construct, maintain and operate educational
   broadcasting, closed circuit or related facilities located at a
   suitable site or sites within this state including, without
   limitation thereby, production centers, broadcasting
   stations and an audio-video microwave system for a
   statewide broadcasting network connecting such
   communities or stations as may be designated by the
   authority.

5. To acquire in the name of the state for the use and
   benefit of the authority by purchase, lease or agreement,
   any property, both real and personal, and any interest in
   such property necessary to carry out the provisions of this
   article.

6. To apply for and receive any license from the
   appropriate federal agency necessary to operate any
   educational broadcasting, closed circuit or related facility.
(7) To supervise and approve the origination and transmission of all noncommercial educational radio, television and related media programs in this state which would be carried through the facilities of a state network.

(8) To employ such personnel as may be necessary to operate and maintain any facility created under the provisions of this article.

(9) To lease from communications common carriers and use such transmission channels as may be necessary or, if it determines it could more economically construct and maintain such transmission channels, it may design, construct, maintain and operate the same, including an audio-video microwave network.

(10) To sue and be sued, plead and be impleaded.

(11) To contract and be contracted with, including the power to enter into contracts with any person, firm or corporation, including any like authority of neighboring states; and shall have the authority, within state regulations, to enter into program royalty and distribution contracts and receive moneys for these purposes: Provided, That any proceeds from such contracts shall be used by the authority for noncommercial purposes only.

(12) To have and use a corporate seal.

(13) To promulgate reasonable rules and regulations to carry out the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of the code.

(14) To perform such other services in behalf of noncommercial educational radio, television and related media as it may consider to be in the best interest of the state.

§10-5-5. **Advisory councils.**

The authority may also create one or more advisory councils. Each council so created shall consist of not more than nine members to be appointed by and serve at the will and pleasure of the authority. Each council shall annually elect a chairperson, vice chairperson and secretary. Members so appointed shall serve without compensation,
but may be reimbursed for actual expenses incident to the performance of their duties as provided in this article for members of the authority.

Any such council shall serve in an advisory manner to one or more facilities established under the provisions of this article as directed by the authority and shall meet at least twice a year.

CHAPTER 87

(H. B. 1882—By Mr. Wooton and Mr. Feinberg)

[Passed March 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, twenty-three and twenty-eight, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto four new sections, designated sections forty-one, forty-two, forty-three and forty-four, relating to the registration of voters generally; setting forth voter registration requirements; establishing a permanent registration system and making provisions for the cancellation and reinstatement of voter registration; authorizing absentee registration by mail under certain circumstances; providing a procedure for changing a registered voter's name; creating an additional procedure for registration and transfer of registration by mail; providing for the processing of applications by the county clerk; requiring the use and distribution of a uniform statewide application for voter registration; requiring certain notice and instructions to be provided on application to persons seeking to register, reregister or transfer registration; requirement of acknowledgement on application; requirements as to voting in person at next election succeeding filing of application; defining certain felony offenses relating to applications for registration, reregistration or change of registration and prescribing penalties therefor; setting forth a procedure to be followed for recording information on a registration application; and authorizing county clerk to reject suspicious applications and to make inquiry in reference thereto.
Be it enacted by the Legislature of West Virginia:

That sections two, three, twenty-three and twenty-eight, article two, chapter three 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 four new sections, designated sections forty-one, forty-two, forty-three and forty-four, all to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Voter registration requirements.

§3-2-3. Registration, cancellation and reinstatement.

§3-2-23. Absentee registration.

§3-2-28. Procedure on change of registered voter's name.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; must be received by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

§3-2-42. Crimes and offenses relating to applications for registration, re-registration, or change of registration; penalties.

§3-2-43. Recording of registration or transfer by the county clerk; transfer of registration by mail.

§3-2-44. Rejection and investigation authorized by county clerk when applicant not entitled to registration or transfer.

§3-2-2. Voter registration requirements.

1. No voter otherwise qualified shall be permitted to vote at any election unless he shall have been duly registered or shall have placed himself within the "challenged voters" provision of this chapter, and only those persons who possess the constitutional and statutory qualifications for voting shall be permitted to register, except that minors, otherwise qualified, who shall have attained the age of eighteen years by the time of the next ensuing election, may be permitted to register.

§3-2-3. Registration, cancellation and reinstatement.

1. A permanent registration system shall hereby be established which shall be uniform throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is
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properly transferred according to the provisions of section twenty-seven or forty-one of this article, unless his registration is canceled as provided in this article.

Within one hundred and twenty days following any election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records appertaining to such election resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter; and, within the same time period following each statewide primary and general election and at the same time that such checkup is made as is by this paragraph required, the clerk shall cancel the registration of each person who has failed to vote at least once during a period covering two statewide primary and two general elections as indicated by his registration record. Any person who has had his registration for that reason canceled shall, by letter, be given proper notice thereof by the clerk of the county commission, to the effect that in order to vote he must register again or execute and file, not later than thirty days before the next primary or general election, with the clerk, a uniform statewide application as described in section forty-one of this article, stating that he desires to be reinstated as a qualified voter at the same address and the clerk shall replace the registration card of the voter in the registration records. A blank copy of such form shall be included with and accompany the aforesaid notice to the voter.

§3-2-23. Absentee registration.

Any person who possesses the qualifications for registration, but who is absent from the state or county on account of occupation, or for any other necessary cause, including service in the armed forces of the United States, may at any time register by mail according to the procedure prescribed by section forty-one of this article.

§3-2-28. Procedure on change of registered voter's name.

Whenever a voter, previously registered, shall change his name, such person shall be required to register again. For
this purpose such person may register by mail in the same manner prescribed in section forty-one of this article. Upon such registration, the clerk of the county commission shall cancel the registration record bearing the voter's former name. When such a change of name is made during the thirty days immediately preceding any election, such voter, if duly registered, may vote at the election under his former name.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; must be received by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

(a) In addition to any procedures which may be used in effecting the biennial checkup as provided under section twenty-one of this article, central registration and transfer as provided under sections twenty-two and twenty-seven of this article, and the provisions with respect to registration of absentee voters under section twenty-three of this article, any qualified person may register or transfer his registration by mail.

(b) Completed applications, when received by any county clerk not later than the fortieth day before the following primary, general or special election, entitle the applicant to vote in such election if he is otherwise qualified. Any county clerk receiving an application from a person who does not reside in his county but who does reside elsewhere in the state shall forthwith forward such application to the proper county clerk. Each county clerk shall make an entry on such application of the date it is received by such clerk, and the application shall remain on file in the office of the clerk for at least two years from the date it was received.

(c) Applications for use pursuant to this section shall be made available by the county clerk to every adult person of the county, not registered, and to any registered voter of the county upon request. The application for use pursuant to this
section shall be a uniform statewide application in a form to be prescribed by the secretary of state and shall include the information required under the form provisions of section nineteen of this article. The form, which shall be self-addressed, is to be as widely and freely distributed as possible and shall be a bifold self-mailer which shall be compatible with local systems of voter registration data collection and storage.

(d) In addition to the information required under the form provisions of section nineteen of this article the form shall contain such other information as the secretary of state may reasonably require and shall also include the following information:

1. Notice that those currently registered do not need to reregister unless they have moved or failed to vote at least once during a period covering two statewide primary and two general elections as indicated by their registration records;

2. Instructions on how to fill out and submit the form and that the form must be received by the appropriate county clerk at least thirty days prior to the election at which the applicant may vote;

3. Notice that registration or transfer is not complete until the form is received by the appropriate county clerk;

4. Notice of a voter's right to register centrally;

5. A warning to the voter that it is a crime to procure a false registration and notice of the felony offenses provided for in section forty-two of this article;

6. Notice that political party enrollment is optional but, in order to vote in a primary election of a political party, a voter must enroll in that political party;

7. Notice that the applicant must be a citizen of the United States, at least seventeen years old and will be eighteen years old on or before the next general election, and a resident of the county to which application is made;

8. Notice that a voter notification form will be mailed to those applicants whose complete form is received;
(9) The telephone number of the county clerk;

(10) A space for the applicant to indicate whether or not he has ever been registered before and, if so, his name and address at the time of prior registration;

(11) A space for the applicant to indicate his choice of party, if any, in which space the names of all parties are provided so that the applicant can check one with a clear alternative provided for an applicant to decline to affiliate with any party;

(12) A place for the applicant to execute the application on a line which is clearly labeled "signature of applicant" and contained in the following specific form of oath or affirmation:

"I do solemnly swear or affirm that the information provided in the preceding uniform statewide application is true to the best of my knowledge, information and belief, and I understand that if I willingly provide false information concerning a material matter or thing therein, I shall be deemed guilty of the felony offense of perjury and shall be subject to the penalties for perjury.

__________________________________________
Signature of applicant

Subscribed and sworn (or affirmed) to before me, this ______ day of ______________________, 19______.

__________________________________________

which oath or affirmation shall be administered by a person authorized to perform notarial acts under the provisions of article one or one-a, chapter thirty-nine of this code. The person administering the oath or affirmation shall not charge a fee for such act, and the uniform statewide application shall inform the person administering such oath or affirmation that no fee is to be charged; and

(13) Any person who has registered, reregistered or transferred registration pursuant to this section shall, in order that such registration be valid, be required to vote in person at the poll or appear in person at the office of the clerk of the cir-
court to vote an absentee ballot in the first election next
succeeding the filing of the application.

(e) The uniform statewide application prescribed by this
section may refer to various public officials by title or official
position (e.g., clerk of the county commission, secretary of
state), but in no case shall the actual name of the officeholder
be printed or otherwise appear on such form: Provided, That
nothing contained in this subsection shall prohibit a public
official, otherwise qualified, from administering the oath or
affirmation in accordance with the provisions of subdivision
(12), subsection (d) of this section, and affixing his signature
thereto.

(f) It shall be the duty of the secretary of state to create and
commence distribution of the forms for the uniform statewide
application within six months following the effective date of
this section.

§3-2-42. Crimes and offenses relating to applications for regis-
tration, reregistration, or change of registration; penalties.

(a) A person who willfully provides false information con-
cerning a material matter or thing in a uniform statewide ap-
lication for registration, reregistration or change of registra-
tion, under oath or affirmation lawfully administered, shall
be deemed guilty of perjury; one who induces or procures
another person to do so shall be deemed guilty of subordina-
tion of perjury.

(b) A person who knowingly offers any application for
registration, reregistration or transfer of registration when
the applicant therein is not qualified to register or transfer
his registration, or any person who knowingly administers
an oath or affirmation to an applicant for registration, re-
registration or change of registration when the application
contains false information concerning a material matter or
thing, or any person who falsely represents that an oath or
affirmation was executed by an applicant for registration,
reregistration or change of registration, shall be guilty of
a felony, and, upon conviction thereof, shall be imprisoned in
the penitentiary not less than one year nor more than three
years, or fined not less than five hundred dollars nor more
than five thousand dollars, or both fined and imprisoned, or, in the discretion of the court, be confined in the county jail for not more than one year, or fined not less than five hundred dollars nor more than five thousand dollars, or both fined and imprisoned.

§3-2-43. Recording of registration or transfer by the county clerk; transfer of registration by mail.

(a) If the application contains substantially all the required information indicating that the applicant is legally qualified to register or transfer registration as stated in his application, the county clerk shall transfer all information on such application to the appropriate registration records. Perforated portions of the application containing the applicant's signature, or in lieu thereof, a photostatic copy of the applicant's signature, shall be pasted in each space provided on the registration records for the insertion of the registrant's signature.

(b) If the application is one for transfer of registration and contains substantially all of the required information and the applicant is legally qualified to transfer his registration as stated in his application, the county clerk shall do so as provided in section twenty-seven of this article.

§3-2-44. Rejection and investigation authorized by county clerk when applicant not entitled to registration or transfer.

(a) If the county clerk suspects or believes that for any reason the applicant is not entitled to registration or to transfer his registration, he shall make inquiry in reference thereto. If the county clerk finds that the applicant is not qualified to register or transfer his registration, the application shall be rejected and the applicant notified of such rejection with the reason therefor, no later than ten days before the first election day next succeeding the filing of the application.

(b) The county clerk, whenever not satisfied from an examination of an application for registration or transfer that the applicant is entitled to such registration or transfer, may order an investigation through any authorized officer or employee of the state or county commission, police officer, sheriff or deputy sheriff.
AN ACT to amend article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to the form of ballot cards in an electronic voting election; the duty of poll clerks to sign ballot cards; and prohibiting the counting of votes cast on ballot cards without such signatures.

Be it enacted by the Legislature of West Virginia:

That article four-a, 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 nineteen-a, to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-19a. Form of ballot cards; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballot cards without such signatures.

1 Every ballot card utilized during the course of any electronic voting system election conducted under the provisions of this article shall provide two lines for the signatures of the poll clerks. Both of the signature lines shall be printed on a portion of the ballot card where votes are not recorded by perforation or other marking, but which portion is an actual part of the ballot card deposited in the ballot box after the voter has perforated or marked his ballot and after the ballot stub has been removed.

10 Each of the two poll clerks shall sign his name on one of the designated lines provided on each ballot card before any ballot card is distributed to a voter. After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot card to the voter, which ballot card has been signed by each of the two poll clerks as provided herein.
In the course of an election contest, if it is established that a ballot card does not contain the two signatures required by this section, such ballot card shall be null, void and of no effect, and shall not be counted.

CHAPTER 89
(H. B. 1958—By Mr. Wiedebusch)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing certain designees to be appointed to the employee suggestion award board.

Be it enacted by the Legislature of West Virginia:

That section two, article one-a, 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 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§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 or his designee, the speaker of the House of Delegates or his designee, 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 commissioner 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.
AN ACT to amend article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine; and to amend and reenact section forty-two, article three-a of said chapter, all relating to the administration of estates generally; providing that a final settlement of an estate may be waived if an inheritance tax release has been filed with the clerk of the county commission through a waiver signed by all heirs and distributees, or their personal representatives, containing an affidavit that there are no known claims against the estate; and increasing certain fees to be charged by fiduciary supervisor at the time of qualification of the fiduciary.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Proof and Allowance of Claims Against Estates of Decedents.
3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-29. Waiver of final settlement if inheritance tax release filed; signed waiver and affidavit stating no claims.

1 Notwithstanding any other provision of this code to the contrary, in all estates where an inheritance tax release has been filed with the clerk of the county commission and more than ninety days has elapsed since the filing of any notice required by section one of this
article, a final settlement may be waived by a waiver which is signed by the personal representative and all heirs and distributees, or their personal representatives, if any such heir be under disability, and which contains an affidavit stating that the time for the filing of claims has expired and averring that there are no known claims against the estate.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

(a) When necessary solely for the purpose of financing the cost of settling estates the county commission may authorize the fiduciary supervisor to charge and collect at the time of qualification of the fiduciary of a decedent's estate, a fee not to exceed seventy-five dollars for all estates where probate assets do not exceed ten thousand dollars in value and a fee not to exceed one hundred dollars where probate assets exceed ten thousand dollars in value, of which sums, five dollars shall be forwarded to the state tax commissioner. The moneys so forwarded to the state tax commissioner shall be deposited in the office of the treasurer of the state in a special fund, designated "The Inheritance Tax Administration Fund," to be used to defray, in whole or in part, the costs of administration of taxes imposed by article eleven, chapter eleven of this code in order to facilitate the prompt administration of the provisions imposed by said article. The remaining amounts shall be deposited in the county fiduciary fund as provided in section forty-three of this article. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of section nineteen, article three-a of this chapter. All such fees shall also include the cost of publication of the notice required by section four, article three-a of this chapter and the notice required by section nineteen, article three-a of this chapter, but shall not include the cost of any
mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge and collect from such personal representative a fee of ten dollars.

(b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of this section for conducting hearings, granting continuances of hearings, considering evidence, for drafting recommendations with respect to such hearings and for appearing before the county commission with respect thereto and any other matters of an extraordinary nature not normally included within a summary settlement as contemplated by section nineteen, article three-a of this chapter. Such fee shall be used to defray the costs imposed by or incidental to any extraordinary demands by or conditions imposed by a fiduciary or imposed by the circumstances of the estate.

(c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the county commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the fiduciary supervisor or fiduciary commissioner or whether such service was performed by an employee or deputy of such supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected as provided in subsection (a) of this section and, in addition thereto, shall indicate those services for which charges are to be made over and above that amount. In the case of any service for which a fee is not fixed by this section, or the fee fixed is based on time expended, the voucher shall show the actual time
personally expended by the supervisor or commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the county commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies. In reviewing any fee charged by either the fiduciary supervisor or a fiduciary commissioner the county commission shall consider the following:

(1) The time and effort expended;
(2) The difficulty of the questions raised;
(3) The skill required to perform properly the services rendered;
(4) The reasonableness of the fee;
(5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and
(6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The county commission may approve any such voucher or may reduce the same, as it deems proper, after considering those matters set forth in this subsection. Any such approval shall be by order of the commission and be entered of record by the clerk of the county commission in the fiduciary record book and the general order books of the commission. In no event shall any fee for any service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

(d) For every estate other than a decedent’s estate, there shall be charged by the fiduciary supervisor at the time of qualification, a fee of twenty-five dollars, which fee shall include all services performed by the fiduciary supervisor with respect to such estate from the time of qualification of the personal representative thereof until
and including the filing of the first annual settlement. For each additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and collect a fee of ten dollars.

(e) The county commission or other tribunal in lieu thereof, shall, by order, establish or fix a schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor and any fiduciary commissioner in preparing their respective vouchers for fees other than those fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.

CHAPTER 91
(Com. Sub. for H. B. 1943—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-c, relating to the authority and duty of security officers appointed by the commissioner of the department of finance and administration; creating the crime of killing or molesting animals, birds or fowls upon the grounds of the capitol buildings or governor's mansion or knowingly allowing a dog or other animal to do so; creating the crime of knowingly allowing a dog to be upon the grounds of the capitol buildings or governor's mansion except under control by leash; creating the crime of knowingly allowing a dog or other animal to defecate upon said ground and subsequently failing to remove said defecation; and proving criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-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 two-c, to read as follows:
ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2c. Unlawful to kill or molest animals, birds of fowls upon grounds of capitol; powers and duties of security officers; penalties.

In addition to the duties of persons appointed and qualified as security officers pursuant to section two-b of this article, to preserve law and order on any premises under the jurisdiction of the commissioner to which he may be assigned by the commissioner, such security officers shall have authority and it shall be the duty of such security officers to enforce the provisions of this section. This authority and duty of security officers shall not be deemed to supersede in any way the authority or duty of other peace officers to enforce the provisions of this section.

It shall be unlawful at any time to kill or molest in any manner, any animals, birds or fowls on the grounds of the capitol buildings or governor's mansion, except as may be deemed necessary by the commissioner for the control or extermination of animals, birds or fowls deemed by him to be pests or a danger to the health and safety. Any person who kills or molests in any manner, or knowingly allows a dog or other animal owned by him to kill or molest in any manner any animals, birds or fowls on the grounds of the capitol buildings or governor's mansion shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than fifty dollars nor more than five hundred dollars or, in the discretion of the court, be imprisoned in the county jail for not more than six months, or both such fine and imprisonment.

It shall be unlawful for any person to knowingly allow a dog owned by him to be upon the grounds of the capitol buildings or governor's mansion unless such dog is under control by leash. Any person who knowingly allows a dog owned by him to be upon the grounds of the capitol buildings or governor's mansion while not under control by leash shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars.

It shall further be unlawful for any person to knowingly allow a dog or other animal owned by him or under his control
to defecate upon the grounds of the capitol buildings or governor's mansion. In the event that a dog or other animal owned by or under the control of a person defecates upon the grounds of the capitol buildings or governor's mansion, the person shall remove such defecation. Any person who knowingly allows a dog or other animal owned by him or under his control to defecate upon the grounds of the capitol buildings or governor's mansion, and who subsequently fails to remove said defecation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than one hundred dollars.

CHAPTER 92
(Com. Sub. for H. B. 1750—By Mr. Schifano and Mrs. Martin)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six, chapter eighteen of said code by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, relating to excluding certain contracts entered into by the West Virginia board of regents from review and approval of director of purchasing unless the board requests otherwise; authorizing the West Virginia board of regents to purchase or acquire materials, supplies, equipment and printing required by the state colleges and universities; adopting rules and regulations; rejecting and awarding bids; preferring resident vendors; maintaining purchase file; requiring qualified buyers by rules and regulations and bond; limiting purchases; providing advance allowance account; providing for contracts and requiring performance bond; making director of purchases available; providing for disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; making other code provisions relating to purchasing not controlling as to purchase, acquisition or disposition of equipment, materials, supplies and printing by the West
Virginia board of regents; exceptions; providing for application of criminal provisions and penalties for certain violations; requiring prequalification disclosure by vendors and registration of vendors and exceptions; making certain persons ineligible to sell or offer to sell commodities or printing; and providing for suspension and review of suspension.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article twenty-six, chapter eighteen of said code be amended by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, all to read as follows:

Chapter
5A. Department of Finance and Administration.
18. Education.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of director of purchasing.

1 The director, under the direction and supervision of the commissioner, shall be the executive officer of the purchasing division and shall have the power and duty to:

4 (1) Purchase or contract for, in the name of the state, the commodities and printing required by the departments of the state government;

7 (2) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

10 (3) Transfer to or between departments or sell commodities that are surplus, obsolete or unused as hereinafter provided;

12 (4) Have charge of central storerooms for the supply of departments;

14 (5) Establish and maintain a laboratory for the testing
of commodities and make use of existing facilities in state
institutions for that purpose as hereinafter provided;

(6) Direct the state agency for surplus property as pro-
vided in sections forty-four and forty-five of this article;

(7) Recommend to the commissioner that the right and
privilege of a person to bid on state purchases be suspended
when the director has evidence that such person has violated
any of the provisions of the purchasing law or the rules and
regulations of the director;

(8) Examine the provisions and terms of every contract
entered into for and on behalf of the state of West Virginia
that impose any obligation upon the state to pay any sums of
money or perform any particular service or do any act or deed
and approve each such contract as to such provisions and terms;
and the duty of examination and approval herein set forth does
not supersede the responsibility and duty of the attorney gen-
eral to approve such contracts as to form: Provided, That the
provisions of this subdivision do not apply in any respect
whatever to construction or repair contracts entered into by
the state commissioner of highways: Provided, however, That
the provisions of this subdivision do not apply in any respect
whatever to contracts entered into by the West Virginia
board of regents for the purchase or acquisition of materials,
supplies, equipment and printing except to the extent that the
board of regents requests the facilities and services of the
director under the provisions of this subdivision; and

(9) Assure that the specifications and product descriptions
in all "requests for quotations" are prepared so as to permit
all potential suppliers-vendors who can meet the requirements
of the state an opportunity to bid. If a state department or
agency other than the purchasing division prepared the speci-
fications or descriptions, the director of the purchasing division
shall review such specifications and descriptions before soliciting
bids to assure that the specifications and descriptions do
not favor a particular brand of product or vendor. If he de-
termines that any such specifications or descriptions as written
favor a particular brand of product or vendor or if it is de-
cided, either before or after the bids are opened, that a product
having different specifications or quality or in different quantity will be bought, the director shall rewrite the "requests for quotations" and the matter shall be rebid.

CHAPTER 18. EDUCATION.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-10c. Purchase or acquisition of materials, supplies, equipment and printing.

§18-26-10d. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

§18-26-10e. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of board, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

§18-26-10f. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

§18-26-10c. Purchase or acquisition of materials, supplies, equipment and printing.

1. All materials, supplies, equipment and printing required for the board, the state universities and the state colleges shall be purchased or acquired by the board. The board shall adopt rules and regulations governing and controlling acquisitions and purchases in accordance with the provisions of this section. Such rules and regulations shall assure that the board:

2. Shall not preclude any person from participating and making sales thereof to the board except as otherwise provided in section ten-f of this article; shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased; shall adopt and prescribe such purchase order, requisition or other forms as may be required; shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law; shall advertise for bids on all purchases exceeding five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices; and shall post in a public place in the central office of the board, in the purchasing office of the specific institu-
tion involved in the purchase and in the office of the depart-
ment of purchases, available to the public during all business
hours, notices of all acquisitions and purchases for which com-
petitive bids are being solicited, at least two weeks prior to
making such purchases.

The board shall further adopt rules and regulations relating
to purchasing in the open market pursuant to section thirteen,
article three, chapter five-a of this code, and shall further
make provision for vendor notification of bid solicitation and
emergency purchasing.

Any or all bids may be rejected. However, all purchases
based on advertised bid requests shall be awarded to the
lowest responsible bidder taking into consideration the quali-
ties of the articles to be supplied, their conformity with speci-
fications, their suitability to the requirements of the board
and delivery terms: Provided, That the preference for resi-
dent vendors as provided in section forty-four, article three of
said chapter five-a shall apply to the competitive bids made
pursuant to this section.

The board of regents shall maintain a purchase file, which
shall be a public record and open for public inspection. After
the award of the order or contract, the board of regents shall
indicate upon the successful bid that it was the successful bid,
and shall further indicate why bids are rejected and, if the
mathematical low vendor is not awarded the order or contract,
the reason therefor. No records in the purchase file shall be
destroyed without the written consent of the legislative auditor.

The board shall also adopt rules and regulations to prescribe
qualifications to be met by any person who, on and after the
effective date of this section, is to be employed as a buyer
pursuant to this section. Such rules and regulations shall pro-
vide that no person shall be employed as a buyer unless such
person, at the time of employment, either is (1) a graduate of
an accredited college or university or (2) has at least four
years' experience in purchasing for any unit of government or
for any business, commercial or industrial enterprise. Any per-
son making purchases and acquisitions pursuant to this section
shall execute a bond in the penalty of fifty thousand dollars,
payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections ten-c through ten-f of this article and the rules and regulations of the board of regents. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the board.

All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds and in accordance with section sixteen, article three of said chapter.

The board may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the board, and the auditor shall draw his warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the board once every thirty days or oftener if required by the state auditor. Such authority shall not be delegated to any state institution under the control and supervision of the board.

Contracts entered into pursuant to this section shall be signed by the board in the name of the state and shall be approved as to form by the attorney general. A contract that requires more than six months for its fulfillment shall be filed with the state auditor. The board shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract. If the board purchases or contracts for materials, supplies, equipment and printing contrary to the provisions of sections ten-c through ten-f of this article or the rules and regulations pursuant thereto, such purchase or contract shall be void and of no effect.

The board may request the director of purchases to make
available, from time to time, the facilities and services of his
department to the board in the purchase and acquisition of
materials, supplies, equipment and printing, and the director
of purchases shall cooperate with the board in all such pur-
chas and acquisitions upon the request of the board.

§18-26-10d. Disposition of obsolete and unusable equipment, sur-
plus supplies and other unneeded materials; inventories.

The board shall dispose of obsolete and unusable equipment,
surplus supplies and other unneeded materials, either by trans-
fer to other governmental agencies or institutions, by ex-
change or trade, or by sale as junk or otherwise. The board
shall adopt rules and regulations governing and controlling the
disposition of all such equipment, supplies and materials. The
board shall advertise, by newspaper publication as a Class II
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, in the county in which
the equipment, supplies and materials are located at least ten
days prior to the disposition, the availability or sales of such
disposable equipment, supplies and materials and may sell
same, in whole or in part, at public auction, or may transfer,
exchange or trade same to other governmental agencies or in-
istitutions (if by exchange or trade, then without advertising),
in whole or in part, as sound business practices may warrant
under existing circumstances and conditions. The board shall
inventory all such disposable equipment, supplies and materials
from time to time as quantity and stocks may warrant, but
shall make a complete annual inventory thereof as of the
thirty-first day of March of each year. The board may report
such inventories to the director of purchases whose services and
facilities shall be available to the board in making advanta-
geous disposition of any part or all of such disposable equip-
ment, supplies and materials. Such inventories shall briefly
describe the disposable items, the date of purchase thereof,
the vendor to the board, the purchase price paid therefor and
the board's order number authorizing disposition thereof and
shall indicate briefly the reason said items are no longer
needed or can no longer be used by the board. All such in-
ventories shall be kept as public records open to public inspec-
tion at one or more of the institutions under the jurisdiction of
the board for a period of five years and may thereafter be de-
stroyed: Provided, That under no circumstances shall any of
the property described in this section be sold, transferred or
conveyed to any private person, firm or corporation other
than by public auction or as provided in article eight, chapter
five-a of this code.

§18-26-10e. Other code provisions relating to purchasing not con-
trolling; exceptions; criminal provisions and penal-
ties; financial interest of board, etc.; receiving any-
thing of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code
shall not control or govern the purchase, acquisition or other
disposition of any equipment, materials, supplies or printing
by the board, except as provided in sections ten-c through ten-
f of this article: Provided, That sections thirty-six, thirty-seven
and thirty-eight, article three of said chapter five-a shall apply
to all purchasing activities of the board.

Neither the board, nor any employee of the board, shall be
financially interested, or have any beneficial personal interest,
directly or indirectly, in the purchase of any equipment, ma-
terials, supplies or printing, nor in any firm, partnership, cor-
poration or association furnishing them. Neither the board nor
any employee of said board shall accept or receive directly or
indirectly from any person, firm or corporation, known by the
board or such employee to be interested in any bid, contract
or purchase, by rebate, gift or otherwise, any money or other
thing of value whatsoever, or any promise, obligation or con-
tract for future reward, or compensation.

A person who violates any of the provisions of the preceding
paragraph shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be confined in jail not less than three
months nor more than one year, or fined not less than fifty
nor more than one thousand dollars, or both, in the discretion
of the court: Provided, That any person who violates any of
25 such provisions by receiving money or other thing of value
26 under circumstances constituting the crime of bribery under the
27 provisions of section three, article five-a, chapter sixty-one of
28 this code, shall, upon conviction of bribery, be punished as
29 provided in said article five-a of chapter sixty-one.

§18-26-10f. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

1 Every person, firm or corporation selling or offering to sell
2 to the board, upon competitive bids or otherwise, any materi-
3 als, equipment, supplies or printing shall comply with all of
4 the provisions of section fourteen-a, article three, chapter five-
5 a of this code and shall file with the director of the purchas-
6 ing division of the state of West Virginia the affidavit re-
7 quired herein: Provided, That every such person, firm or
8 corporation who is presently in compliance with said section
9 shall not be required to requalify thereunder to be able to
10 transact business with the board.

11 Any person, firm or corporation failing or refusing to com-
12 ply with said statute as herein required shall be ineligible to
13 sell or offer to sell commodities or printing to the board as
14 hereinafter set forth: Provided, That any person suspended
15 under the provisions of section thirty-nine of said article three
16 shall not be eligible to sell or offer to sell commodities or
17 printing to the board: Provided, however, That the board shall
18 have the power and authority to suspend, for a period not to
19 exceed one year, the right and privilege of a person to bid on
20 purchases of the board when there is reason to believe that
21 such person has violated any of the provisions in sections ten-c
22 through ten-f of this article or the rules and regulations of the
23 board pursuant thereto. Every person whose right to bid has
24 been so suspended shall be notified thereof by a letter posted
25 by registered mail containing the reason for such suspension
26 and shall have the right to have the board's action reviewed in
27 accordance with section forty, article three, chapter five-a
28 of this code.
CHAPTER 93
(S. B. 642—By Mr. Wright)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to the capitol mail office; presorting of mail.

Be it enacted by the Legislature of West Virginia:

That article four, chapter five-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 seven, to read as follows:

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-7. Preparation of mail for special postal rates.

1 All mail received by the mailing office for deposit in the United States mail may be processed and presorted according to postal regulations in order to receive the most favorable mailing rates available. The commissioner is authorized to make such expenditures as are necessary to presort all outgoing mail or to enter into contracts with any person, firm or corporation engaged in such business to supply the service.

CHAPTER 94
(Com. Sub. for S. B. 47—By Mr. Holliday, Mr. Boettner, Mr. McGraw, Mr. President, and Mr. Tonkovich)

[Passed March 12, 1983; 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 the state
agency for surplus property; specifying additional eligible purchasers to be public service districts, county building commissions, airport authorities and parks and recreation commissions to purchase state surplus property; authorizing the director of the state agency for surplus property to sell expendable, obsolete or unused motor vehicles owned by the state to eligible organizations, for a price less than the "average loan" value as published in the National Automobile Dealer's Association Official Used Car Guide (N.A.D.A.) when the fair market value of the vehicle is less than the N.A.D.A. average loan value; and providing that such fair market value must be based on a thorough inspection of the vehicle by the director or his representative; sale of vehicles to eligible organizations; restrictions on titling and resale.

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; semiannual report by director; application of proceeds from sale.

1 The director shall have the exclusive power and authority to make disposition of commodities or expendable commodities 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.

2 The director shall determine what commodities or expendable 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, public service districts, county building commissions, airport authorities, parks and recreation commissions, and volunteer fire departments in this state, when such volunteer fire departments have been
held exempt from taxation under section 501(c) 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 an eligible organization described above, the director
shall set the price to be paid by the receiving eligible
organization, with due consideration given to current
market prices.

The director may sell expendable, obsolete or unused
motor vehicles owned by the state to an eligible
organization, other than volunteer fire departments. 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 an eligible
volunteer fire department. The director, with due
consideration given to current market prices, shall set the
price to be paid by the receiving eligible organization, for
motor vehicles sold pursuant to this provision: Provided,
That the sale price of any motor vehicle sold to an eligible
organization shall not be less than the "average loan" value,
as published in the most recent available eastern edition of
the National Automobile Dealer's Association (N.A.D.A.)
Official Used Car Guide, if such a value is available, unless
the fair market value of the vehicle is less than the N.A.D.A.
"average loan" value, in which case the vehicle may be sold
for less than the "average loan" value. Such fair market
value must be based on a thorough inspection of the vehicle
by the director or his representative who shall consider the
mileage of the vehicle, and the condition of the body, engine and tires as indicators of its fair market value. If no such value is available, the director shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of such eligible organization, for whom such motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title thereto to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. Such ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of such purchase or transfer. Resale or transfer of ownership of such motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

The director shall report to the legislative auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization, 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 commodities 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 95
(S. B. 28—By Mrs. Spears)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the state
geological and economic survey; establishing a director
thereof; authorizing him to employ assistants and set fees;
and creating a special revenue account subject to legisla-
tive appropriation.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

1. The state geological and economic survey, heretofore
   established, shall be continued. The governor shall ap-
   point as director of the survey a geologist of established
   reputation. The director may employ such assistants and
   employees as he may deem necessary. He shall also de-
   termine the compensation of all persons employed by the
   survey, and may remove them at pleasure.

2. The director may set such reasonable fees as may be
   necessary to recover additional costs incurred in perform-
   ing geological and analytical analyses. These fees shall be
   deposited in the state treasury in a special revenue ac-
   count, to be known as the "Geological and Analytical
   Services Fund." The director is hereby authorized to
   expend such funds, as are appropriated by the Legislature,
   from this fund for the purpose of defraying said costs.

CHAPTER 96

(H. B. 1249—By Mr. Steptoe and Mr. Hagedorn)

[Passed March 5, 1983; in effect July 1, 1983. Approved by the Governor.]
thirty-one, as amended, relating to expenditures by the state department of health; authorizing advance payments to be made to public and nonprofit health services providers only after determination of necessity therefor and for period no greater than necessary.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-12. Expenditures of state department of health.

1 The state department of health shall have power to expend annually, for the purpose of performing the duties imposed on it, or authorized by law, such sum as may be appropriated by the Legislature for the department of health. The director of health shall audit all bills, which shall be made out in due form and verified by the members of the board of health, directors of divisions, employees or agents rendering services or incurring traveling or other expenses in the performance of the duties of their offices or employments. Such bills, when approved by the auditor, shall be paid out of the state treasury.

12 The director of the department of health is authorized to make advance payments to public and nonprofit health services providers when it has been determined by the director of health to be necessary for the initiation or continuation of health services. Such advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the director of the necessity therefor and shall be for a period no greater than ninety days in advance of rendition of service or receipt of goods and continuation of health services.
AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compulsory testing for tuberculosis of school children and school personnel; X ray required only if medically indicated.

Be it enacted by the Legislature of West Virginia:

That section four-a, 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.

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

1 All kindergarten pupils and all first grade pupils who have not had an approved tuberculin skin test in kindergarten and all students transferring from a school located outside this state shall furnish a certificate from a licensed physician stating that a tuberculin skin test approved by the director of the department of health has been made within four months prior to the beginning of the school year, unless such pupil has moved to this state from another state less than four months prior to starting the school year, in which event such pupil shall have such test as soon in advance of the start of the school as is reasonable, or if the school year has already started, the pupil shall take such test within one month of the time he enters school. Test results must be recorded on the certificate. Positive reactors to the skin test must be immediately evaluated by a physician and, if medically indicated, X rayed, and receive periodic X rays thereafter, when medically indicated.
Pupils found to have tuberculosis in a communicable stage will not be allowed to attend school until their disease has been arrested and is no longer communicable.

All school personnel shall have an approved tuberculin skin test at time of employment and once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be immediately referred to a physician for evaluation and indicated treatment or further studies. The county health officer shall be responsible for arranging proper follow-up of school personnel and students who are unable to obtain physician evaluation for a converted tuberculin skin test. School personnel found to have tuberculosis in a communicable stage shall have their employment discontinued or suspended until their disease has been arrested and is no longer communicable. School personnel who have not had the required examination will be suspended from employment until reports of examination are confirmed.

CHAPTER 98

(H. B. 1747—By Mr. Givens and Mrs. Theiling)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration of infants born with specified birth defects; requiring physician or midwife to check for defects; defects specified; registration of minors with impairments.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with specified birth defects; requiring physician or midwife to check for defects, including visual impairments; registration of minors with previously undiagnosed impairments; form to be provided by state registrar; confidentiality; exceptions; parental consent.

1 When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any of the following birth defects:

4 (a) Anencephaly;
5 (b) Spina bifida;
6 (c) Hydrocephaly;
7 (d) Cleft palate;
8 (e) Total cleft lip;
9 (f) Esophageal atresia and atresia;
10 (g) Rectal and anal atresia;
11 (h) Hypospadias;
12 (i) Reduction and deformity—upper limb;
13 (j) Reduction and deformity—lower limb;
14 (k) Congenital dislocation of the hip;
15 (l) Down’s syndrome;
16 (m) Visual impairments; and
17 (n) Others as may be requested by the director.

18 If any such impairment is found in an infant, and/or if such impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the state registrar of vital statistics on forms provided by the state registrar of vital statistics. The report shall include the
name of the child, the name or names of the parents or parent or guardian and a description of the impairment.

The information received by the state registrar pursuant to this section pertaining to the identity of the persons named shall be kept confidential: Provided, That if consent of the parents, or if only one parent exists, of the parent, or of the guardian is obtained, the registrar may provide such information to the department of health, the department of welfare, the department of education, the division of vocational rehabilitation and the school for the deaf and the blind so that such information can be utilized to provide assistance or services for the benefit of the child.

CHAPTER 99
(H. B. 1742—By Mrs. Blatnik and Mrs. Leary)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to consumer representatives on hospital boards of directors; percentage of consumer representatives required.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-6a. Consumer majorities on hospital boards of directors.

(a) The Legislature declares that a crisis in health care costs exists, that one important approach to deal with this crisis is to have widespread citizen participation in hospital decision making and that many hospitals in West Virginia exclude from their boards important categories of
consumers, including small businesses, organized labor, elderly persons and lower-income consumers. The Legislature further declares that nonprofit hospitals receive such major revenue from public sources and are so crucial in health planning and development that it is necessary to require consumer representatives on their boards of directors. Therefore, the Legislature determines that nonprofit hospitals and hospitals owned by local governments should have boards of directors representative of the communities they serve.

(b) As used in this section, “applicable hospitals” means all nonprofit hospitals and all hospitals owned by a county, city or other political subdivision of the state of West Virginia.

(c) At least forty percent of the boards of directors of applicable hospitals shall, on or before the first day of July, one thousand nine hundred eighty-four, be composed of an equal portion of consumer representatives from each of the following four categories: Small businesses, organized labor, elderly persons and persons whose income is less than the national median income. Special consideration shall be made to select women, racial minorities and handicapped persons.

(d) The provisions of this section may be enforced by the director of health, or by any citizen of the county wherein any offending hospital is located, by the filing of an action at law in the circuit court of such county.

CHAPTER 100
(Com. Sub. for H. B. 1668—By Mr. Kelly and Mrs. Brown)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-c, chapter sixteen 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 nursing and personal care homes; providing that each patient’s personal funds shall be kept in a separate account; requiring consent for use; requiring records; and providing penalties.
Be it enacted by the Legislature of West Virginia:

That article five-c, 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 eighteen, to read as follows:

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-18. Separate accounts for patient's personal funds; consent for use; records; penalties.

(a) Each nursing home and personal care home subject to the provisions of this article shall hold in a separate account and in trust each patient's personal funds deposited with the facility.

(b) No person may use or cause to be used for any purpose the personal funds of any patient admitted to any such facility unless consent for the use thereof has been obtained from the patient or from a committee or guardian or relative.

(c) Each nursing home and personal care home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each patient in the facility, including the purpose and payee of each disbursement, and shall render a true account of such record to the patient or his representative upon demand and upon termination of the patient's stay in the facility.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

CHAPTER 101

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]
to a new article, designated article twenty-nine, relating to patient access to health care records.

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-nine, to read as follows:

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

§16-29-2. Reasonable expenses to be reimbursed.

§16-29-1. Copies of health care records to be furnished to patients.

Any licensed, certified or registered health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his authorized agent or authorized representative, within a reasonable time, furnish a copy or summary of the patient's record to the patient, his authorized agent or authorized representative subject to the following exceptions:

(a) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative following termination of the treatment program.

(b) Nothing in this article shall be construed to require a health care provider responsible for diagnosis, treatment or administering health care services in the case of minors for birth control, prenatal care, drug rehabilitation or related services, or venereal disease according to any provision of the code, to release patient records of such diagnosis, treatment or provision of health care as aforesaid to a parent or guardian, without prior written consent therefor from the patient, nor shall anything in this article be construed to apply to persons regulated under the provisions of chapter eighteen of this code or the rules and regulations established thereunder.

(c) The furnishing of a copy or summary of the reports of x-ray examinations, electrocardiograms and other diagnostic
26 procedures shall be deemed to comply with the provisions of
27 this article.

28 (d) For purposes of this article, “patient record” does not
29 include a provider's office notes.

30 (e) The provisions of this article may be enforced by a
31 patient, authorized agent or authorized representative, and
32 any health care provider found to be in violation of this
33 article shall pay any attorney fees and costs, including court
34 costs incurred in the course of such enforcement.

§16-29-2. Reasonable expenses to be reimbursed.

1 The provider shall be reimbursed by the person requesting in
2 writing a copy of such records at the time of delivery for all
3 reasonable expenses incurred in complying with this article.

CHAPTER 102

(Com. Sub. for S. B. 320—By Mr. McGraw, Mr. President, Mr. Nelson,
Mrs. Chace, Mrs. Lucht, Mr. Heck, Mr. Holliday, Mr. Holmes, Mr. Boettner,
Mr. Stacy and Mr. Davis)

(Passed March 12, 1983; in effect 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-nine-b, relating to legislative findings; definitions; freeze
on hospital rates and cap on revenues; penalty; notice; creation of the West Virginia health care cost review authority
within the department of health; qualifications; oath; chairman; terms; vacancies; compensation; advisory coun-
cil; staff; powers generally; budget; funding; annual report;
jurisdiction; authority designated as state's health planning agency and to assume certificate of need functions as
of July one, one thousand nine hundred eighty-four; hear-
ings; administrative procedures applicable; examiner;
subpoena power; review of final orders; injunctions and
mandamus; refusal to comply; start-up period; uniform
system of accounts and financing, reporting; annual reporting by hospitals; rate-setting powers; commencement of review activities; determination of rates; procedure for initial rate schedules; adjustments and revisions; incentives; utilization review and quality assurance; powers with respect to insurance policies; public disclosure; exemptions from antitrust laws; criminal penalties for violations; effective date; and termination date.

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-nine-b, to read as follows:

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-1. Legislative findings; purpose.
§16-29B-2. Short title.
§16-29B-3. Definitions.
§16-29B-4. Freeze on rates, cap on revenues; penalty; notice.
§16-29B-5. Establishment of the West Virginia health care cost review authority; creation of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chariman; and meetings of board.

§16-29B-6. Advisory council.
§16-29B-7. Staff.
§16-29B-8. Powers generally; budget expenses of the board.
§16-29B-9. Annual report.
§16-29B-10. Jurisdiction of the board.
§16-29B-11. Designation of board as the state's health planning agency.
§16-29B-12. Hearings; administrative procedures act applicable; hearing examiner; subpoenas.
§16-29B-14. Injunction; mandamus.
§16-29B-15. Refusal to comply.
§16-29B-16. Start-up period.
§16-29B-17. Uniform system of accounts and financing; reporting.
§16-29B-18. Hospital annual financing reporting.
§16-29B-19. Rate-setting powers generally.
§16-29B-20. Rate determination.
§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.
§16-29B-22. Incentives.
§16-29B-23. Utilization review and quality assurance.
§16-29B-24. Powers with respect to insurance policies and health organizations.
§16-29B-25. Public disclosure.
§16-29B-26. Exemptions from state antitrust laws.
§16-29B-27. Penalties for violations.
§16-29B-28. Effective date and termination date.

§16-29B-1. Legislative findings: purpose.

The Legislature hereby finds and declares that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of acute care hospital services. In order to alleviate this threat, information on hospital cost must be gathered, a system of cost control must be developed and an entity of state government must be given authority to ensure the containment of acute care hospital costs. Therefore, the purpose of this article is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate acute care hospital services.

§16-29B-2. Short title.

This article may be cited as the “West Virginia Health Care Cost Review Authority.”

§16-29B-3. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(a) “Charges” means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(b) “Class of purchaser” means a group of potential hospital patients with common characteristics affecting the way in which their hospital care is financed. Examples of classes of purchasers are medicare beneficiaries, welfare recipients, subscribers of corporations established and operated pursuant to article twenty-four, chapter thirty-three of this code, members of health maintenance organizations and other groups as defined by the board;

(c) “Board” means the three member board of directors
of the West Virginia health care cost review authority, an autonomous division within the state department of health;

(d) "Health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical care, treatment or confinement;

(e) "Hospital" means a facility subject to licensure as such under the provisions of article five-b of this chapter and any acute care facility operated by the state government 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, and does not include state mental health facilities or state long-term care facilities;

(f) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, estate or political subdivision or instrumentality thereof;

(g) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a hospital, but does not include third party payors;

(h) "Rates" means all value given or money payable to hospitals for health care services, including fees, charges and cost reimbursements;

(i) "Records" means accounts, books and other data related to health care costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy; and

(j) "Third party payor" means any natural person,
person, corporation or government entity responsible for
payment for patient care services rendered by hospitals.

§16-29B-4. Freeze on rates; cap on revenues; penalty; notice.
1 All rates for hospital services provided on the first day
2 of February, one thousand nine hundred eighty-three,
3 shall remain the same for such services on and after that
date except as adjustments are provided in this article.
5 Until such time as the board created in section five of
6 this article establishes the initial rate schedule for a hospi-
7 tal pursuant to the provisions of section twenty-one, said
8 hospital’s gross patient revenues as most recently re-
9 ported to the department of health pursuant to article
10 five-f of this chapter shall not increase by more than
11 twelve percent per annum. Any hospital altering its
12 payor mix by increasing or decreasing the proportion
13 of medicare, medicaid or charity care patients during this
14 period shall have its allowed twelve percent per annum
15 increased or decreased in proportion to the change in
16 its patient mix.

17 Any hospital whose gross patient revenues exceed
18 those allowed as set forth in this section shall pay back
19 the excess to the board. Within thirty days of passage
20 of this article, the health department shall notify each
21 hospital of the provisions of this section: Provided, That
22 prior to the first day of July, one thousand nine hundred
23 eighty-four, or until such earlier time as the board may
24 determine, the director of the state department of health
25 shall be empowered to approve temporary rate increases
26 for hospitals subject to the provisions of this article, in
27 accordance with the provisions of section twenty-one,
28 subsection (c) of this article. The board shall have
29 authority to develop rules and regulations to administer
30 the provisions of this section.

§16-29B-5. Establishment of the West Virginia health care
cost review authority; creation of the board; qualifications; terms; oath; compensation and ex-
penses of members; vacancies; appointment of chairman; and meetings of the board.
1 There is created within the department of health an
autonomous division, the "West Virginia Health Care Cost Review Authority," hereinafter referred to as the board.

(a) The board shall consist of three members, appointed by the governor, with the advice and consent of the Senate. The board members shall be citizens and residents of this state. No more than two of said board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(b) Each board member shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article IV of the constitution of the state of West Virginia, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the board members to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the board. The governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. The governor shall appoint three board members, one for a term of two years, one for a term of four years and one for a term of six years, with all the terms beginning on the effective date of this article. All future appointments shall be for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only. No board member shall serve more than two consecutive six-year terms.

(c) No person while in the employ of, or holding any official relation to, any hospital subject to the provisions of this article, or who has any pecuniary interest therein, may serve as a member of the board or as an employee thereof. Nor may any such board member be a candidate for or hold public office or be a member of
any political committee while acting as such board member; nor may any board member or employee of said board receive anything of value, either directly or indirectly from any hospital subject to the provisions of this article. Should any of the board members become a candidate for any public office or for membership on any political committee, the governor shall remove said board member from the board and shall appoint a new board member to fill the vacancy created. No board member may accept employment with any hospital subject to the jurisdiction of the board within two years after said board member ceases to be a board member.

(d) The concurrent judgment of two of the board members when in session as the board shall be deemed the action of the board. A vacancy in the board shall not affect the right or duty of the remaining board members to function as a board.

(e) The annual salary of the chairman of the board shall be forty thousand dollars. The annual salary of the other board members shall be thirty-six thousand five hundred dollars.

§16-29B-6. Advisory council.

There is created the West Virginia health care cost review council, hereinafter referred to as the council:

(a) The council shall be composed of twelve members. Five members shall serve in an ex officio capacity and have no vote, and those members being the director of health, the commissioner of human services, the commissioner of insurance, the chairman of the public employees insurance board and the director of the division of vocational rehabilitation, or their respective designated representatives. The seven voting members shall be appointed by the governor, with the advice and consent of the Senate, and shall be selected as follows: One representative of the health insurance industry, one administrator of a large hospital, one administrator of a small hospital and four members who are consumers of health services. When selecting the members who are consumers of health services,
services, in addition to other factors, consideration shall be given to constituencies of organized labor, major purchasers of health insurance and senior citizens.

(b) No more than four of the voting members of the council may belong to the same political party, and no more than two may reside in the same congressional district. Selection of all voting members of the council shall be made with due diligence to ensure membership thereon by persons representing all cultural, demographic and ethnic segments of the population of this state. Members of the council shall be appointed for terms of three years each, except that of the voting members first appointed, three members shall be appointed for terms of one year, two members for terms of two years and two members for terms of three years. Members shall be eligible for reappointment for a second three-year term. Vacancies shall be filled in the same manner as the original appointments for the duration of the unexpired term. The board shall appoint a chairman of the council who shall serve at the will and pleasure of the board.

(c) The presence of a majority of the voting members of the council shall constitute a quorum for the transaction of business. The council shall elect from among its voting members a vice chairman and such other officers as it shall deem necessary. The council shall meet no less than four times during the calendar year, and additional meetings shall be held upon a call of the chairman or a majority of the voting members, or the board.

(d) The council shall serve as an advisory body to the board on the development of health care cost containment policy, strategies and methods, and shall review, and from time to time make recommendations in regard thereto, state-of-the-art concepts in health care policy at the national, state and local level and their application to the deliberations of the board. The council shall serve as a conduit for the collection and transmission of information to the board regarding the consequences of board policy upon health care cost con-
(e) In order to assist with the council's deliberations, the board's staff shall gather information on cost containment efforts, including, but not limited to, the provision of alternative delivery systems, prospective payment systems, alternative rate-making methods and programs of consumer education. The council shall pay particular attention to the economic and health status impact of such efforts on purchasers or classes of purchasers, particularly the elderly and those on low or fixed incomes.

(f) The board staff shall further gather information on state-of-the-art advances in medical technology, the cost effectiveness of such advances and their impact on health care advances in hospital and health care management practices, and any other state-of-the-art concepts relating to health care cost containment, health care improvement or other issues the council finds relevant and directs staff to investigate. The board staff shall prepare and keep a register of such information and update it on an annual basis.

(g) The board shall consider any recommendations of the council regarding additions or modifications to the board's rate setting and cost containment responsibilities as well as other responsibilities under the board's purview.

(h) The council shall make its own report to the board, the governor and the Legislature within thirty days of the close of each fiscal year. This report shall include summaries of all meetings of the council, any public comments on board decisions, together with any suggestions and policy recommendations.

(i) Council members shall be reimbursed from the board fund for sums necessary to carry out its responsi-
abilities and for reasonable travel expenses to attend council meetings.

§16-29B-7. Staff.

(a) The board may employ such persons as may be necessary to effect the provisions of this article. The board shall set the respective salaries or compensations of all staff. Any person employed by the board other than on a part-time basis shall devote full time to the performance of his or her duties as such employee during the regular working hours of the board.

(b) The board shall appoint general counsel who shall act as legal counsel to the board. The general counsel shall serve at the will and pleasure of the board:

(1) The general counsel may act to bring and to defend actions on behalf of the board in the courts of the state and in federal courts.

(2) In all adjudicative matters before the board, the general counsel shall advise the board. The staff shall represent itself in all such actions before the board.

(c) The board may contract with third parties, including state agencies, for any services that may be necessary to perform the duties imposed upon it by this article where such contractual agreements will promote economy, avoid duplication of effort or make the best use of available expertise.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, rules and regulations in accordance with article three, chapter twenty-nine-a of this code;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of services in hospitals subject to the provisions of this article and may subpoena witnesses,
papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commission and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

(6) Exercise, subject to limitations or restrictions hereinafter imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.
(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital’s obligation. The amount of such fee shall be determined by the board except that in no case shall a hospital’s obligation exceed one tenth of one percent of its gross revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund, designated “health care cost review fund,” with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) During the board’s start-up period, before the first day of July, one thousand nine hundred eighty-four, each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the provisions of article five-f, chapter sixteen of this code. Within sixty days of passage of this article, the department of health shall notify each hospital of the amount of such fee, which in no case shall exceed one tenth of one percent of the gross revenue of each hospital, the total amount of which fees shall not in any event exceed five hundred thousand dollars during said start-up period. Such fees shall be paid into the aforementioned special fund in two equal installments, the first of which shall be paid on the first day of April, one thousand nine hundred eighty-three, the second of which shall be paid on the first day of January, one thousand nine hundred eighty-four.

(e) Each hospital’s assessment shall be treated as an allowable expense by the board.

(f) The board is empowered to withhold rate approvals if any such fees remain unpaid.
§16-29B-9. **Annual report.**

1 The board shall, within thirty days of the close of the fiscal year, or from time to time as requested by the Legislature, prepare and transmit to the governor and the Legislature a report of its operations and activities for the preceding fiscal year. This report shall include summaries of all reports made by the hospitals subject to this article, together with facts, suggestions and policy recommendations the board considers necessary. The board shall, after rate review and determination in accordance with the provisions of this article, include such rate schedules in its annual report or other reports as may be requested by the Legislature.

§16-29B-10. **Jurisdiction of the board.**

(a) Notwithstanding any other provision of state law, after the first day of July, one thousand nine hundred eighty-four, the jurisdiction of the board as to rates for health services care shall extend to all hospitals as defined herein doing business in the state of West Virginia (with the exception of hospitals owned and operated by the federal government).

(b) Those costs or charges associated with individual health care providers or health care provider groups providing inpatient or outpatient services under a contractual agreement with hospitals (excluding simple admitting privileges) shall be under the jurisdiction of the board. The jurisdiction of the board shall not extend to the regulation of rates of private health care providers or health care groups providing inpatient or outpatient services under a contractual agreement with hospitals when the provision of such service is outside the hospital setting, and shall not extend to the regulation of rates of all other private health care providers practicing outside the hospital setting: Provided, That such practice outside of the hospital setting is not found to be an evasion of the purposes of this article.

§16-29B-11. **Designation of board as the state's health planning agency.**

(a) On and after the first day of July, one thousand
nine hundred eighty-four, notwithstanding any provision
of this code to the contrary, the board shall be the state's
health planning and development agency, as provided
by section 1521 of the United States Public Health Services
Act, as amended, and it shall carry out and perform all
the functions set forth in section 1523 of that act, includ-
ing review and approval or disapproval of capital ex-
penditures for health care facilities or services as de-
lineated in article two-d of this chapter.

(b) On and after the first day of July, one thousand
nine hundred eighty-four, the board shall serve as the
planning agency designated in the agreement between
the state and the secretary of the department of health
and human services pursuant to Title 42, United States
Code section 1320a-1 (1976), as amended, in which the
use of federal funds for capital expenditures is limited to
those projects approved by the planning agency.

(c) This article does not affect proceedings that were
begun or rights or powers enforceable under the pro-
visions of article two-d of this chapter at any time before
the first day of July, one thousand nine hundred eighty-

§16-29B-12. Hearings; administrative procedures act applica-
able; hearing examiner; subpoenas.

(a) The board may conduct such hearings as it deems
necessary for the performance of its functions and shall
hold hearings when required by the provisions of this
chapter or upon a written demand therefor by a person
aggrieved by any act or failure to act by the board or by
any rule, regulation or order of the board. All hearings
of the board shall be announced in a timely manner and
shall be open to the public except as may be necessary
to conduct business of an executive nature.

(b) All pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern the
hearing and administrative procedures in connection with
and following the hearing except as specifically stated
to the contrary in this article.
(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed for such purpose. Any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision 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 the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board, and shall have equal access to the expertise of the board’s staff. The board shall have authority to develop rules and regulations to administer provisions of this section.

(g) The decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this article.

(a) A final decision of the board and the record upon which it was made shall, upon request of any affected party, be reviewed by the agency of the state designated by the governor to hear appeals under the provisions of article two-d of this chapter. To be effective, such request must be received within thirty days after the date upon which all parties received notice of the board decision, and the hearing shall commence within thirty days of receipt of the request.

(b) For the purpose of administrative review of board 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 administrative cases in section four, 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 review 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 all affected parties, and shall be made available by the commission to others upon request.

(e) The decision of the review agency shall be considered the final decision of the board; however, the review agency may remand the matter to the board for further action or consideration.

(f) Upon the entry of a final decision by the review agency, any affected party may within thirty days after the date upon which all affected parties receive notice of the decision of the review agency, appeal said decision in the circuit court of Kanawha County. The decision of the review agency shall be reviewed by that circuit court in accordance with the provisions for the judicial
§16-29B-14. Injunction; mandamus.

The board may compel obedience to its lawful orders by injunction or mandamus or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and such proceeding shall be determined in an expeditious manner.

§16-29B-15. Refusal to comply.

(a) Whenever a hospital fails or refuses to furnish to the board any records or information requested under the provisions of this article or otherwise fails or refuses to comply with the requirements of this article or any reasonable rule and regulation promulgated by the board under the provisions of this article, the board may make and enter an order of enforcement and serve a copy thereof on the hospital in question by certified mail, return receipt requested.

(b) The hospital shall be granted a hearing on the order of enforcement if, within twenty days after receipt of a copy thereof, it files with the board a written demand for hearing. A demand for hearing shall operate automatically to stay or suspend the execution of the order of enforcement, with the exception of orders relating to rate increases.

(c) Upon receipt of a written demand for a hearing, the board shall set a time and place therefor, not less than ten and no more than thirty days thereafter. Any scheduled hearing may be continued by the board upon motion for good cause shown by the hospital demanding the hearing.

§16-29B-16. Start-up period.

(a) The department of health shall cooperate to the fullest extent possible and transfer all data, records, reports, analyses and summaries filed, collected or developed by the department of health pursuant to article
five-f of this chapter, upon request of the board. With
the approval of the board the department of health shall
expend out of any funds available for the purpose such
moneys as are necessary for the use of its staff by the
board during the start-up period, and the department of
health shall be reimbursed by the board for any such
expenses so incurred. During the lifetime of the board
the functions and responsibilities set forth in article five-f
of this chapter shall be performed by the board, and
whenever in this code reference is made to said article
five-f, said reference shall be deemed to mean reference
to the board.

(b) The board shall then compile all other relevant
financial and accounting data in order to have available
the statistical information necessary to properly con-
duct rate review and approval. Such data shall include
necessary operating expenses, appropriate expenses in-
curred for rendering services to patients who cannot or
do not pay, all properly incurred interest charges, and
reasonable depreciation expenses based on the expected
useful life of the property and equipment involved. The
board shall also obtain from each hospital a current rate
schedule as well as any subsequent amendments or
modifications of that schedule as it may require.

(c) Prior to the commencement of review activities,
the board may examine rate-making methods used by
other regulatory agencies in the state and hospital rate-
making agencies in other states before adopting a method
or methods for determining rates for the hospitals sub-
ject to this article.

(d) Upon appointment, the board shall enter into
negotiations with the health care financing administra-
tion within the United States department of health and
human services to seek approval and assurances from,
and enter into agreements with, the United States depart-
ment of health and human services so that the afore-
mentioned federal agency and affected state agencies al-
low reimbursement to hospitals subject to the provisions
of this article in accordance with rates approved by the
board. The absence of such approval and assurances from, and agreements with, the health care financing administration within the department of health and human services shall not diminish the authority of the board to set rates of payment for other payors.

(e) On or before June one, one thousand nine hundred eighty-four, the board shall submit its application for purposes of entering into an agreement with the secretary of the department of health and human services so that the aforementioned federal agency agrees to allow payment for services provided by hospitals subject to the provisions of this article in accordance with rates approved by the board. If such agreement is not obtained by the board from the department of health and human services on or before December one, one thousand nine hundred eighty-four, then the board, is functions, this article, and all rules and regulations promulgated thereunder shall terminate, and be void and of no further effect.

(f) No later than the first day of June, one thousand nine hundred eighty-three, every hospital shall provide to the board a full and complete verified statement of services offered as of the first day of February, one thousand nine hundred eighty-three, together with a verified statement of rates in effect as of the first day of February, one thousand nine hundred eighty-three, for such services.

§16-29B-17. Uniform system of accounts and financing; reporting.

(a) The board shall develop and specify a uniform system of accounting and financial reporting, including cost allocation methods by which hospitals shall record their revenues, income, expenses, capital outlay, assets, liabilities and units of service. The development and specification process aforementioned shall be conducted in a manner determined by the board to be most efficient for that purpose notwithstanding the provisions of chapter twenty-nine-a of this code. Each hospital shall adopt this
uniform system for the purpose of reporting costs and revenues to the board effective for the fiscal year begin-
ing on or after twelve months from the effective date of this article.

(b) The board may provide for modification in the accounting and reporting system in order to correctly reflect differences in the scope or type of services and financial structures of the various categories, sizes and types of hospitals and in a manner consistent with the purposes of this article.

(c) The board may provide technical assistance to those hospitals which request it and which evidence sufficient need for assistance in the establishment of a data collection system to the extent that funds are available to the board for this purpose.

(d) The board shall, after consultation with health care providers, purchasers, classes of purchasers and third-party payors, adopt a mandatory form for reporting to the board, at its request, medical diagnosis, treatment and other services rendered to each purchaser by health care providers subject to the provisions of this article.

(e) Following a public hearing, the board shall establish a program to minimize the administrative burden on hospitals by eliminating unnecessary duplication of financial and operational reports; and to the extent possible, notwithstanding any other law, coordinate reviews, reports and inspections performed by federal, state, local and private agencies.

§16-29B-18. Hospital annual financial reporting.

(a) It shall be the duty of every hospital which comes under the jurisdiction of this article to file with the board the following financial statements or reports in a form and at intervals specified by the board, but at least annually:

(1) A balance sheet detailing the assets, liabilities and net worth of the hospital for its preceding fiscal year;
(2) A statement of income and expenses for the preceding fiscal year;

(3) A statement of services rendered and services available; and

(4) Such other reports as the board may prescribe.

Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(b) The annual financial statements filed pursuant to this section shall be prepared in accordance with the system of accounting and reporting adopted under section seventeen of this article. The board may require attestations from responsible officials of the hospital that such reports have to the best of their knowledge been prepared truthfully and in accordance with the prescribed system of accounting and reporting.

(c) All reports filed under any provisions of this article, except personal medical information personally identifiable to a purchaser, shall be open to public inspection and shall be available for examination at the offices of the board during regular business hours.

(d) Whenever a further investigation is deemed necessary or desirable to verify the accuracy of any information set forth in any statement, schedule or report filed by a hospital under the provisions of this section, the board may require a full or partial audit of the records of the hospital.

§16-29B-19. Rate-setting powers generally.

(a) The board shall have power: (1) To initiate reviews and investigations of hospital rates and establish and approve such rates; (2) to initiate reviews and investigations of hospital rates for specific services and the component factors which determine such rates; (3) to initiate reviews and investigations of hospital budgets and the specific components of such budgets; and (4) to approve or disapprove hospital rates and budgets taking
into consideration the criteria set forth in section twenty of this article.

The board shall commence reviews no sooner than twelve months and no later than fifteen months after the effective date of this article.

(b) In the interest of promoting the most efficient and effective use of hospital service, the board may adopt and approve alternative methods of rate determination. The board may also adopt methods of charges and payments of an experimental nature which are in the public interest and consistent with the purpose of this article.

§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

(1) The costs of the hospital’s services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or regulations conflict with this requirement. Equity among classes of purchasers may be achieved by considering demonstrated differences in the financial requirements of hospitals resulting from service, coverage and payment characteristics of a class of purchasers. The provision for differentials in rates among classes of purchasers should be carried out in the context of each hospital’s total financial requirements for the efficient provision of necessary services. The board shall institute a study of objective methods of computing the percentage differential to be utilized for all hospitals in determining appropriate projected gross revenues under subsection (b) of this section. Such study shall include a review and determination of the relevant and justifiable economic factors which can be considered in setting such
The differential shall be allowed for only those activities and programs which result in quantifiable savings to the hospital with respect to patient care costs, bad debts, free care or working capital, or reductions in the payments of other payors. Each component utilized in determining the differential shall be individually quantified so that the differential shall equal the value assigned to each component. The board shall consider such matters as coverage to individual subscribers, the elderly and small groups, payment practices, savings in hospital administrative costs, cost containment programs and working capital. The study shall also provide for a method of annual recomputation of the differential and triennial recomputation of all other components. The board may contract with any person or entity to assist the board in the discharge of its duties as herein stated. Whoever obstructs any person or entity conducting a study authorized under the provisions of this section shall be deemed to be in violation of this article and shall be subject to any appropriate actions, including injunctive relief, as may be necessary for the enforcement of this section;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevailing rates for similar services in similar hospitals as determined by the board.

(b) In the interest of promoting efficient and appropriate utilization of hospital services the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as such revenues
relate to charges for services and anticipated incidence of service. The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth above, the board shall consider all relevant factors including, but not limited to, the following: The economic factors in the hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and, income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from foundations and restricted funds whether or not so associated.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low. Said exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. "Non supervisory personnel," for the purposes of this section, means, but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if such costs were incurred subsequent to the eighth day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved by the state planning development agency prior to the first day of July,
one thousand nine hundred eighty-four, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest or mandate changes in buildings or operations of hospitals shall give notice to the board together with any findings.

(g) Rates shall be set by the board in advance of the year during which they apply except for the procedure set forth in subsection (c), section twenty-one of this article and shall not be adjusted for costs actually incurred.

(h) All determinations, orders and decisions of the board with respect to rates and revenues shall be prospective in nature.

(i) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

(a) The board shall propose the initial schedule of rates and shall notify the affected hospital and community by registered mail and announcement in the local media respectively. Any hospital may contest its proposed rate schedule by written notice to the board within twenty days after receipt of the proposed schedule. The board shall, in a contested proceeding, issue a final order with regard to the initial schedule of rates within ninety days after the board first submits the proposed initial schedule. If no notice of contest is filed, the proposed rates shall go into effect sixty days from the date first proposed.

(b) After the issuance of the order establishing the initial rate schedule, no hospital subject to this article
(1) Any request for a change in rate schedules or other changes must be filed in writing to the board with such supporting data as the hospital seeking to change its rates considers appropriate, in the form prescribed by the board. Upon receipt of notice, the board, if it considers necessary, may hold a public hearing on the proposed change. Such hearing shall be held no later than forty-five days after receipt of the notice. The review of the proposed change may not exceed an overall period of one hundred eighty days from the date of filing to the date of the board's order. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board. Any proposed change shall go into effect upon the date specified in the order;

(2) Each hospital shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

(A) The economic and social impact of any proposed rate increase, or service decrease, on hospital cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(B) State-of-the-art advances in health care cost containment, hospital management and rate design, as alternatives to or in mitigation of any rate increase, or service decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each;

(C) Implementation of cost control systems, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms;
(D) Initiatives to create alternative delivery systems; and

(E) Efforts to encourage third-party payors, including, but not limited to, insurers, health service, care and maintenance organizations, to control costs, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(3) In the event the board modifies the request of a hospital for a change in its rates so that the hospital obtains only a partial increase in its rate schedule, the hospital shall have the right to accept the benefits of the partial increase in rates and charge its purchasers accordingly without in any way adversely affecting or waiving its right to appeal that portion of the decision and order of the board which denied the remainder of the requested rate increase.

(c) Whether before or after the issuance of the order establishing the initial rate schedule for a hospital subject to the provisions of this article, the board, or the director of the state department of health as stated in section four of this article, shall have the discretionary authority to allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when it has been determined that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. When considering such temporary rate change requests, the board or the director shall extend preference to hospitals demonstrating immediate risk of insolvency, or demonstrating substantial financial hardship, to main accreditation or for emergency repairs which in the discretion of the board or the director justifies temporary rate changes prior to commencement of or full review of said rate changes by the board as set forth in this article. The board or the director when considering requests for temporary rate changes shall consider:

(1) The financial burden imposed upon purchasers or classes of purchasers by such change;
(2) Whether such change is in the public interest;

(3) Other factors determined to be relevant to the merits of a temporary rate change request.

(d) The board or the director shall make public its findings concerning a temporary rate change request.

(e) The board shall develop standards and criteria in order to assure that any temporary rate change is in the public interest and necessary to prevent harm to the public interest and to prevent insolvency or to relieve undue financial hardship. For temporary rate setting and review functions performed by the director of the state department of health pursuant to the provisions of this article, the board shall reimburse said department for all reasonable and necessary expenses incurred by the department in fulfillment of its responsibilities, duties and functions hereunder, until such time as the board assumes such responsibilities, duties and functions unto itself pursuant to the provisions of this article.

(f) When any change affecting an increase in rates goes into effect before a final order is entered in the proceeding, for whatever reasons, where it deems it necessary and practicable, the board may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third-party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the board may order the hospital to refund with interest to each affected purchaser and/or third-party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the board, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that portion of the increase in rates which was subsequently held to be excessive or unreasonable.

(g) The board, upon a determination that a hospital has overcharged purchasers or charged purchasers at
rates not approved by the board or charged rates which
were subsequently held to be excessive or unreasonable,
may prescribe rebates to purchasers and third-party
payors in effect by the aggregate total of the over-
charge.

(h) That board may open a proceeding against any
hospital at any time with regard to compliance with
rates approved and the efficiency and effectiveness of the
care being rendered in the hospital.

§16-29B-22. Incentives.

The board shall be required to allow, as an incentive
to the efficient management and operation of hospitals
covered by this article, that if said hospitals are more ef-
cient than anticipated, they shall retain a portion of the
resulting savings and if less efficient shall bear the re-
sulting deficits.

§16-29B-23. Utilization review and quality assurance.

(a) In order to avoid unnecessary or inappropriate
utilization of hospital services and to ensure high quality
hospital care, the board shall establish a utilization re-
view and quality assurance program. The board shall
coordinate this program with utilization review and
peer review programs presently established in state
agencies, hospital services and health service corpora-
tions, hospitals or other organizations.

(b) With the assistance of the above-mentioned enti-
ties, and after public hearings, the board shall develop
a plan for the review, on a sampling basis, of the necessity
of admissions, length of stay and quality of care rendered
at said hospitals.

(c) The board shall monitor identified problem areas
and shall impose such sanctions and provide such incen-
tives as necessary to ensure high quality and appropriate
services and utilization in hospitals under the jurisdiction
of this article.
§16-29B-24. Powers with respect to insurance policies and health organizations.

(a) With respect to any policy of accident or health insurance, including, but not limited to, those insurance policies covered by articles fifteen, sixteen and sixteen-a, chapter thirty-three of this code, and with respect to any health service, care or maintenance organization, or similar health-related organizations, including, but not limited to, those covered by articles twenty-four, twenty-five and twenty-five-a, chapter thirty-three of this code, the board shall:

1. Be considered for all purposes a directly affected party before the insurance commissioner for purposes of any application, hearing or appeal on insurance matters;

2. Review requests for, and make comments on, proposed rate increases or coverage decreases submitted to the insurance commissioner with respect to the reasonableness of the request and impact on health care cost containment;

3. Comment on the advisability, reasonableness and impact on health care cost containment of any other matter coming before the insurance commissioner or any other governmental agency or body.

(b) On or before the date of filing with the insurance commissioner of any rate, including any proposed increase or decrease thereof, and any coverage matter, including any proposed increase or decrease thereof, each company or organization, described in subsection (a) above, shall notify the board of such filing, by copy thereof or notice form, as the board directs.

(c) Each company or organization, described in subsection (a) above, shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

1. The economic and social impact of any proposed
rate increase, or coverage decrease, on health care cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(2) State-of-the-art advances in insurance and health care management and rate design as alternatives to or in mitigation of any rate increase, or coverage decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each:

(3) Implementation of cost control systems, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(4) Initiatives to create alternative delivery systems;

and

(5) Efforts to encourage health care providers to control costs, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms.

§16-29B-25. Public disclosure.

1 From time to time, the board shall engage in or carry out analyses and studies relating to health care costs, the financial status of any hospital subject to the provisions of this article or any other appropriate related matters, and it shall be empowered to publish and disseminate any information which would be useful to members of the general public in making informed choices about hospitals.

§16-29B-26. Exemptions from state antitrust laws.

1 Actions of the board shall be exempt from antitrust action as provided in section five, article eighteen, chapter forty-seven of this code. Any actions of hospitals under the board's jurisdiction, when made in compliance with orders, directives, rules or regulations issued or promulgated by the board, shall likewise be exempt.
§16-29B-27. Penalties for violations.

In addition to civil remedies set forth, any person or hospital violating any provision of this article or any valid order or rule and regulation lawfully established hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars. Each day of a continuing violation after conviction shall be considered a separate offense. No fines assessed may be considered part of the hospital's costs in the regulation of its rates.

§16-29B-28. Effective date and termination date.

This article shall be in effect from passage. The board shall terminate under the provisions of article ten, chapter four of the code, on the thirtieth day of June, one thousand nine hundred eighty-seven, unless extended by legislation enacted before the termination date.

CHAPTER 103

(Com. Sub. for H. B. 1532—By Mr. Steptoe and Mr. Doyle)

[Passed March 9, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pari-mutuel wagering on interstate and intrastate horse and dog racing generally; requiring the approval of the owners and trainers at horse racetracks to contracts between certain legal wagering entities and racing associations licensed in the state; and requiring one tenth of one percent of the commissions retained by certain licensees be paid into the general revenue fund of county commissions or of the municipality of the county or municipality in which the race track is located.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, 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.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1. (1) Notwithstanding any other provisions of this code, a racing association licensed in this state to conduct race meetings may, with the consent of the racing commission and the written approval of the authorized representative of a majority of the owners and trainers who hold the permit required by section two of this article at the horse race track, contract with any legal wagering entity in this or any other state to accept wagers on any race or races conducted by such legal wagering entity. Such wagering shall be conducted within the confines of such licensee's racetrack unless the wager becomes part of the host racing association's pari-mutuel pool.

2. (2) Such horse association shall retain a basic commission not to exceed seventeen and twenty-five one-hundredths percent of all money wagered, plus an additional amount equal to one and seventy-five one-hundredths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, quinella and perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single betting interest on three or more horses. Breakage shall be calculated and distributed in the manner provided by subsection (c), section nine of this article.

3. (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.

4. (4) Out of the commission retained or deducted by a licensee under the provisions of subsections (2) and (3) of this section, the licensee shall pay one tenth of one percent into the general fund of the county commission of the county in which
34 the racetrack is located, except if within a municipality, then
35 to such municipality's general fund.
36
37 (5) The association shall pay each day a pari-mutuel pools
38 tax calculated under the provisions of section ten of this
39 article.
40
41 (6) After deducting the county or municipal share pro-
42 vided for in subsection (4) of this section and the pari-mutuel
43 pools tax required by subsection (5) of this section, and the
44 amount required to be paid under the terms of the contract
45 with the legal wagering entity of this or another state and the
46 costs of transmission, the horse racing association shall make
47 a deposit equal to fifty percent of the remainder into the purse
48 fund established under the provisions of subdivision (b) (1),
49 section nine of this article.
50
51 (7) All of the provisions of the “Federal Interstate Horse-
52 racing Act of 1978,” also known as Public Law 95-515, sec-
53 tion 3001-3007 of title 15, U. S. Code, shall be instructive as
54 the intent of this section.
55
56 (8) For the purposes of this section the words “legal
57 wagering entity” shall be limited to any person engaged in
58 horse racing or dog racing pursuant to a license or other
59 permission granted by the state in which such person's race-
60 track is situated and conducting race meetings, with a pari-
61 mutuel wagering system permitted under that state’s laws
62 and in which the participants are wagering with each other and
63 not the operator.

CHAPTER 104

(5. B. 150—By Mr. Tucker)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article eighteen, chapter thirty-one of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, by adding thereto a new section, desig-
nated section twenty-three-a, relating to the West Virginia
housing development fund; county and municipal governments; and bond issues under the Federal Revenue Adjustments Act of 1980.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


1. Under subtitle A of Public Law 96-499, which is called the "Mortgage Subsidy Bond Tax Act," a subtitle of the "Revenue Adjustments Act of 1980," this state is permitted to issue up to two hundred million dollars per year during the three year life of the act. Pursuant to that act, the Legislature hereby authorizes the West Virginia housing development fund to issue bonds in the aggregate amount of one hundred million dollars in the year one thousand nine hundred eighty-three. County and municipal governments are hereby authorized to issue bonds in the amount of one hundred million dollars during the year one thousand nine hundred eighty-three. County and municipal governments are hereby authorized to issue bonds in the amount of one hundred million dollars during the year one thousand nine hundred eighty-three: Provided, That the allocation to a county or municipality is to be based on a formula using the percentage of the state population residing in the county or municipality based on the 1980 census: Provided, however, That use of the allocation by a county or municipality is conditioned upon such county or municipality providing to the housing development fund an analysis supporting the demand for the bonds to be issued or firm commitments from qualified lenders participating in the program. Each county and municipality shall have until the thirtieth day of September, one thousand nine hundred eighty-three, to sell bonds allocated under this act, after which time all unused authority is then allocated to the housing development fund. The housing development fund shall determine the manner of reallocation for such unused authority or
may itself issue bonds for all or part of the unused authority. Counties and municipalities choosing not to issue bonds may assign any unused authority to another county or municipality upon notification of such action to the housing development fund. Such transfer must result in a sale of bonds by the thirtieth day of September of that year. Any county or municipality may apply in the manner prescribed by the housing development fund for reallocation or an additional allocation.

CHAPTER 105
(Com. Sub. for S. B. 419—By Mr. Boettner, Mr. Holliday and Mr. Palumbo)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; providing for notice of and an alternative right to sue if a complaint is dismissed for certain reasons or no public hearing and no conciliation agreements have been had within specified time periods; and providing for ninety days in which to file suit and the conclusion of proceedings before the commission upon such filing.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.


(a) Except as provided in subsection (b), 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.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may institute an action against a respondent in the county wherein the respondent resides or transacts business at any time within ninety days after the complainant is given notice of a right to sue pursuant to this subsection (b) or, if the statute of limitations on the claim has not expired at the end of such ninety-day period, then at any time during which such statute of limitations has not expired. If a suit is filed under this section the proceedings pending before the commission shall be deemed concluded.

The commission shall give a complainant who has filed a complaint a notice of a right to sue forthwith upon (1) the dismissal of the complaint within one hundred eighty days of the filing thereof for any reason other than a decision on the merits of the case, or (2) the expiration of a period of one hundred eighty days during which period no public hearing has been held on such complaint and the commission and the respondent have not entered into a conciliation agreement to which the complainant is a party: Provided, That the commission shall also give the complainant notice of a right to sue in any case in which, after the expiration of one year, the complaint has not been determined on its merits or a conciliation agreement entered into to which the complainant is a party.
Notice of right to sue shall be given immediately upon complainant being entitled thereto, by personal service or certified mail, return receipt requested, which notice shall inform the complainant in plain terms of his right to institute a civil action as provided in this section within ninety days of the giving of such notice. Service of the notice shall be complete upon mailing.

(c) In any action filed under this section, if the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay or any other legal or equitable relief as the court deems appropriate. In actions brought under this section, the court in its discretion may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

(d) The provisions of this section shall be available to all complainants whose active cases are pending before the human rights commission as well as those complainants who file after the effective date of this section.

CHAPTER 106
(H. B. 1351—By Mrs. Neel)

[Passed February 28, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to renaming the department of welfare the department of human services; and continuing department of welfare as department of human services.
Be it enacted by the Legislature of West Virginia:

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

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed department of human services; continuation.

The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but from the effective date of this section its name shall be the department of human services. All references in the code to the department of welfare shall mean the department of human services, and all references to the commissioner of the department of welfare shall mean the commissioner of the department of human services and for all other legal purposes the department of welfare shall continue as the department of human services.

CHAPTER 107

(S. B. 672—By Mr. Williams)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article four of said chapter; and to amend chapter sixteen of said code by adding thereto a new article, designated article two-e, all relative to state funding for birthing center services; licensure of birthing centers; definitions; applications and fees; suspension or revocation of license;
judicial review; establishment of rules and regulations by
director of health; emergency filing; insurance coverage of
birthing center charges; violations; penalties; injunction.

Be it enacted by the Legislature of West Virginia:

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

Chapter

CHAPTER 9. HUMAN SERVICES.

Article
2. Department of Human Services and Office of Commissioner of Human
Services; Powers, Duties and Responsibilities Generally.
4. State Advisory Board; Medical Services Fund; Advisory Council; Relief
Fund.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES, AND OFFICE
OF COMMISSIONER OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES GEN-
ERALLY.


1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws and
3 regulations, the commissioner, in addition to all other
4 powers, duties and responsibilities granted and assigned to
5 that office in this chapter and elsewhere by law, is
6 authorized and empowered to:
7 (1) Promulgate, amend, revise and rescind department
8 rules and regulations respecting the organization and
9 government of the department and the execution and
10 administration of those powers, duties and responsibilities
11 granted and assigned by this chapter and elsewhere by law
12 to the department and the commissioner.
13 (2) Promulgate, amend, revise and rescind department
14 rules and regulations respecting qualifications for
15 receiving the different classes of welfare assistance
16 consistent with or permitted by federal laws, rules and
17 regulations, but not inconsistent with state law: Provided,
18 That such rules and regulations respecting qualifications
19 shall permit the expenditure of state funds to pay for care
20 rendered in any birthing center licensed under the
21 provisions of article two-e, chapter sixteen of this code, by a
22 licensed nurse midwife or midwife as this occupation is
23 defined in section one, article fifteen, chapter thirty of this
24 code, and which care is within the scope of duties for such
25 licensed nurse midwife or midwife as permitted by the
26 provisions of section seven, article fifteen of said chapter
27 thirty.

28 (3) Obtain by purchase or lease such grounds, buildings,
29 office or other space, equipment, facilities and services, as
30 may be necessary for the execution and administration of
31 those powers, duties and responsibilities granted and
32 assigned by this chapter and elsewhere by law to the
33 department and the commissioner.

34 (4) Sign and execute in the name of the state by the state
35 department of human services any contract or agreement
36 with the federal government or its agencies, other states,
37 political subdivisions of this state, corporations, associa-
38 tions, partnerships or individuals.

39 (5) Establish such special funds as may be required by
40 the Federal Social Security Act, as amended, or by any
41 other act or acts of Congress, in order for this state to take
42 full advantage of the benefits and provisions thereof
43 relating to the federal-state assistance and federal
44 assistance programs administered by the department, and
45 to make payments into and disbursements out of any such
46 special fund or funds in accordance with the requirements
47 of the Federal Social Security Act, as amended, or any other
48 act or acts of Congress, and in accordance with applicable
49 state law and the objects and purposes of this chapter. In
50 addition, the state department of human services, through the
51 commissioner, is hereby authorized to accept any and all
52 gifts or grants, whether in money, land, services or
53 materials, which gift or gifts, if in the form of moneys, shall
54 be placed in a separate fund and expended solely for the
55 purpose of welfare programs. No part of this special fund
56 shall revert to the general revenue funds of this state. No
57 expenses incurred pursuant to this special fund shall be a
58 charge against the general funds of this state.
(6) Establish, in addition to the state advisory board and advisory council provided for in this chapter, such county advisory boards as may in his judgment be necessary or desirable to advise the department and the commissioner with respect to the total welfare assistance program administered by the department or any phase thereof, such additional board or boards to consist of such number of persons, professional, lay, or both, and to have such responsibilities of an advisory nature, as the commissioner may determine. However, (1) the members of any such additional board or boards shall not be compensated for their services but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties as a member of any such board; and (2) the members of any such additional board or boards shall serve at the will and pleasure of the commissioner.

(7) Provide at department expense a program of continuing professional, technical and specialized instruction for the personnel of the department.

(8) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his place of residence in this state to his place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.

(9) Establish and maintain such institutions as are necessary for the temporary care, maintenance and training of children and other persons.

(10) Prepare and submit state plans which will meet the requirements of federal laws, rules and regulations governing federal-state assistance and federal assistance and which are not inconsistent with state law.
(11) Organize within the department a board of review, consisting of a chairman appointed by the commissioner and as many assistants or employees of the department as may be determined by the commissioner and as may be required by federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance, such board of review to have such powers of a review nature and such additional powers as may be granted to it by the commissioner and as may be required by federal laws, rules and regulations respecting federal-state assistance and federal assistance.

(12) Provide by rules and regulations such review and appeal procedures within the department of human services as may be required by applicable federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by said board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining to welfare assistance.

(13) Provide by rules and regulations, consistent with requirements of applicable federal laws, rules and regulations, application forms and application procedures for the various classes of welfare assistance.

(14) Provide locations for making applications for the various classes of welfare assistance.

(15) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of welfare assistance.

(16) Delegate to the personnel of the department all powers and duties vested in the commissioner, except the power and authority to sign contracts and agreements, but the commissioner shall remain responsible therefore.

(17) Make such reports, in such form and containing such information, as may be required by applicable federal laws, rules and regulations respecting federal-state assistance and federal assistance.
Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter.

ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-2. Medical services fund.

The special fund known as the state of West Virginia public assistance medical services fund established by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as amended by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty, and chapter forty-nine, acts of the Legislature, regular session, one thousand nine hundred sixty-six, shall be continued in accordance with the provisions of this section so long as the same may be required by federal laws, rules and regulations applicable to federal-state assistance and thereafter so long as the commissioner shall deem such fund to be otherwise necessary or desirable, and henceforth such special fund shall be known as the department of human services medical services fund, hereinafter referred to as the fund.

The fund shall consist of payments made into the fund out of state appropriations for medical services to recipients of specified classes of welfare assistance and such federal grants-in-aid as are made available for specified classes of welfare assistance. Any balance in the fund at the end of any fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made out of the fund upon requisition of the commissioner by means of a warrant signed by the auditor and treasurer.

Recipients of those classes of welfare assistance as are specified by the department, consistent with applicable federal laws, rules and regulations, shall be entitled to have costs of necessary medical services paid out of the fund, in the manner and amounts, to the extent, and for the period determined from time to time to be feasible by the commissioner pursuant to rules, regulations and standards established by him. Such rules, regulations and standards shall comply with requirements of applicable federal laws, rules and regulations and shall be established on the basis
of money available for the purpose, the number of recipients, the experience with respect to the incidence of illness, disease, accidents, and other causes among such recipients causing them to require medical services and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other factor considered relevant and proper by the commissioner: Provided, That such rules and regulations respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code, by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven, article fifteen of said chapter thirty.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

For the purpose of this article:

"Birthing center" means a type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant clients.

§16-2E-2. Birthing centers to obtain license; application; fees; suspension or revocation.

No person, partnership, association or corporation, or any local governmental unit or any division, department, board or agency thereof may operate a birthing center unless such operation shall have been approved and licensed by the state director of health in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder provided that all birthing centers which are in operation or which have received a certificate of need valid as of the date of passage of this act shall be deemed to have been so approved and shall be issued a license within thirty days of passage of this act.
Any person, partnership, association or corporation, or any local governmental unit or any division, department, board or agency thereof desiring a license hereunder shall file with the department of health an application in such form as the department shall prescribe and furnish accompanied by a fee of ten dollars. Information received by the department of health under the provisions of this section shall be confidential. The director of health is authorized to issue licenses for the operation of birthing centers which are found to comply with the provisions of this article and with all rules and regulations promulgated by the department. The license issued shall not be transferred or assignable. The director of health is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules and regulations are violated.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director of health if, when and after, the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.
The court shall have the power to affirm, modify or reverse the decision of the department and either the applicant or licensee or the department may appeal from the court's decision to the supreme court of appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

Any applicant or licensee who is dissatisfied with the decision of the state department of health as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal to the circuit court, in term or in vacation, of the county in which the applicant or licensee is located for judicial review of the decision.

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

The director of health shall promulgate rules and regulations not in conflict with any provision of this article, as it finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the director shall be limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment, such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises.

The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth, and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within sixty days of passage of this act, the director of health shall proceed to promulgate such rules and regulations under the provisions of chapter twenty-nine-a, article three, section fifteen.
Not later than the first day of July, one thousand nine hundred eighty-three, every policy or contract of individual accident and sickness insurance covered under the provision of article fifteen, chapter thirty-three, or policy or contract of group accident and sickness insurance covered under the provisions of article sixteen of said chapter, including, but not limited to, any subscriber contract issued by a corporation organized pursuant to article twenty-four of said chapter, shall include benefits to all subscribers and members for birthing center service charges, and for care rendered therein by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven, article fifteen of said chapter thirty.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board or agency thereof establishing, conducting, managing or operating a birthing center without first obtaining a license therefor as herein provided, or violating any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

Notwithstanding the existence or pursuit of any other remedy, the director may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any division,
chapter 108

section 11

right of subrogation by department of human services to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) if medical assistance is paid on behalf of a recipient of medical assistance because of any sickness, injury, disease
or disability, and another person is legally liable for such expense, the department may recover reimbursement for such medical assistance from such other person, or from the recipient of such assistance if he has been reimbursed by the other person. The department shall be legally subrogated to the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to such sickness, injury, disease or disability; and the commissioner may compromise, settle and execute a release of any such claim. The provisions of this subsection are subject to the provisions of subsection (b) of this section.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his medical expenses, even though such person received medical assistance in the payment of such medical expenses in whole or in part.

If the action be tried by a jury, the jury shall not be informed as to the interest of the department of human services, if any, and such fact shall not be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment or the verdict, direct that an amount equal to the amount of medical assistance given be withheld and paid over to the department of human services. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the department of human services there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his attorney of record so that the department shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he may have against another person and delivering to the department, from the proceeds of such settlement, the sums received by him from the department or paid by the department for his medical
42 assistance. Any release given by a person who has received
43 medical assistance to another person releasing such other
44 person of liability with respect to any cause of action shall be
45 binding upon the department if the person for whose benefit
46 the release inures is unaware of, or has not been informed of,
47 the interest of the department therein. If such other person is
48 aware of or has been informed of the department's interest
49 in the matter, it shall be the duty of the person to whose bene-
50 fit the release inures to withhold so much of the settlement
51 as may be necessary to reimburse the department to the extent
52 of its interest in the settlement. If the department intends to
53 maintain an action against any person for the collection of
54 sums paid by it for medical assistance, it shall, prior thereto,
55 notify the recipient of such assistance of its intent to bring an
56 action at least thirty days prior to the bringing thereof. Such
57 notice shall inform the recipient of the department's intent
58 and shall advise the recipient of his right to bring such action
59 in his own name in which he may include as a part of his claim
60 the sums claimed by the department. Such notice shall also
61 advise the recipient that unless the department is notified by
62 him or his representative within thirty days of the date of the
63 receipt of such notice, the department shall proceed to main-
64 tain an action to the extent of its interest in the name of the
65 department. Any action subsequently brought by the depart-
66 ment in its name as subrogee of the recipient shall not preclude
67 the recipient from maintaining an action in his own name
68 for the full amount of the claim and any verdict rendered
69 therein shall be reduced by the amount previously awarded
70 the department as hereinafter provided. To the extent pro-
71 vided herein and in no other event, unless specifically provided
72 by law, shall any cause of action be divisible or capable of
73 being spilt if such cause arises from the same transaction.

CHAPTER 109
(H. B. 1739—By Mr. Jordan)
[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]
three-one, as amended, relating to unlawful methods of hunting and fishing; use of a ferret.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided,

17 That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.
Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun after the hour of five o’clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a fire-
arm from the magazine of which all shells and cartridges
have not been removed, in or on any vehicle or conveyance,
or its attachments, within the state, except as may otherwise
be provided by law or regulation. Except as hereinafter
provided, between five o'clock postmeridian of one day and
seven o'clock antemeridian, eastern standard time of the day
following, any unloaded firearm, being lawfully carried in
accordance with the foregoing provisions, shall be so carried
only when in a case or taken apart and securely wrapped.
During the period from July first to September thirtieth, in-
clusive, of each year, the foregoing requirements relative to
carrying certain unloaded firearms shall be permissible only
from eight-thirty o'clock postmeridian to five o'clock ante-
meridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be taken
after the hour of five o'clock antemeridian on Sunday any
wild animals or wild birds: Provided, That traps previously
and legally set may be tended after the hour of five o'clock
antemeridian on Sunday, if the person so doing shall not
have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the
influence of intoxicating liquor;

(13) Hunt, catch, take, kill, injure or pursue a wild animal
or bird with the use of a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals
unless licensed to do so;

(15) Have in his possession or about his premises,
without the written permission of the director, any hunting
or fishing paraphernalia which cannot be used lawfully in
this state for hunting or fishing, and any conservation officer
shall remove and destroy such hunting and fishing parapher-
nalia, whenever found in this state, and the person or persons
claiming ownership shall have no recourse at law against
such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill
any fish at any time by any means other than by rod,
line and hooks with natural or artificial lures unless
otherwise authorized by law or regulation issued by
the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch or have in his possession, living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon
conviction thereof, shall be fined not more than five hundred
dollars or imprisoned for not less than six months nor more
than three years, or both fined and imprisoned;

(21) Have a bow and gun, or have a gun and any arrow or
arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer
with any arrow unless the same is equipped with a point
having at least two sharp cutting edges measuring in excess
of three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow
having an explosive head or shaft, a poisoned arrow, or an
arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or from
aircraft, motor-driven watercraft, motor vehicle or other
land conveyance;

(26) Permit any dog owned by him or under his control to
chase, pursue or follow upon the track of any wild animal or
wild bird, either day or night, between the first day of May
and the fifteenth day of August next following: Provided,
That dogs may be trained on wild animals and wild birds,
except deer and wild turkeys, and field trials may be held
or conducted on the grounds or lands of the owner or by his
bona fide tenant or tenants or upon the grounds or lands of
another person with his written permission or on public lands,
at any time: Provided, however, That notwithstanding any of
the above provisions, no person may train a dog in any
county in which there is a legal bear hunting season, except
that residents may train dogs in such counties after the
twenty-fourth day of August through the end of the legal small
game hunting season: Provided further, That nonresidents
shall not train dogs in this state at any time except during the
legal small game hunting season: And provided further, That
the person training said dogs does not have firearms or other
implements in his possession during the closed season on
such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(27) Conduct or participate in a field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(28) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision six, section seven, article one of this chapter.

CHAPTER 110

(H. B. 1257—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-two, relating to a special season for the taking of deer with muzzle-loading rifles.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section forty-two, to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.


There shall be a special season each year for the taking of deer with muzzle-loading rifles to be set at such time and to be of such duration as determined by the director: Provided, That such special season shall not be set prior to the regular season for the taking of deer with firearms. Deer of either sex may be taken during this season with muzzle-loading rifles in all counties open for the taking of antlerless deer as provided in section forty-six-b of this article. Antlered deer only may be taken in all other counties having a regular season for the taking of deer with firearms.

Only single shot muzzle-loading rifles with iron sights having a bore diameter of no less than forty-four one-hundredths inch shall be legal firearms for the taking of deer during the special season provided herein.

A hunter killing a deer with a muzzle-loading rifle may hunt for and kill an additional deer during the bow season or regular firearms season, but shall not hunt for or kill more than two deer in any calendar year.

The special season provided herein shall be concurrent with all other seasons designated for the taking of game.

CHAPTER 111

(H. B. 1872—By Mr. Manchin and Mr. Starcker)

[Passed March 12, 1983; in effect January 1, 1984. Approved by the Governor.]

AN ACT to repeal section forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class L nonresident statewide bow and arrow hunting and fishing license and Class LL nonresident statewide bow and arrow bear hunting license.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§1. Repeal of section relating to Class L nonresident statewide bow and arrow hunting and fishing license and Class LL nonresident statewide bow and arrow bear hunting license.

Section forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 112

(5. B. 508—By Mr. Williams)

[Passed March 8, 1983; 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 eliminating certain restrictions on the issuance of Class N special deer hunting licenses.

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 antlerless deer of either sex during the Class N license season. The fee for a Class N license is eight dollars.

6 The Class N license may be issued only for the purpose of removing antlerless deer 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.

When the director deems it essential that Class N license season be held in a particular county or part of a county, that season shall be set by the natural resources commission as provided for in section seventeen, article one of this chapter.

Bona fide resident landowners or their resident children, bona fide residents of West Virginia who are 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 or Class Q license issued for the current calendar year or a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in section twenty-eight, article two of this chapter, except that this requirement shall not apply to persons under the age of fifteen. 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 or Class Q license.

CHAPTER 113

(H. B. 1234—By Mr. Ballouz and Mr. Shaffer)

[Passed March 12, 1983; 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 sixty, re-
lating to wildlife resources; requiring deer and wild boar hunters, on public lands or the lands of another, to wear daylight fluorescent orange attire; providing an exemption; and criminal penalty.

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 sixty, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.
§ 20-2-60. Required attire for deer hunters; exemption; penalty.

1 Any person who hunts deer on public lands or the lands of another during the period designated for firearms hunting of deer shall wear a daylight fluorescent orange outer garment over at least four hundred square inches of his person: Provided, That persons engaged in agricultural occupations shall be exempt from the provisions of this section while hunting deer on their own property. Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars.

CHAPTER 114
(H. B. 1664—By Mr. Farley)

[Passed March 3, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and fourteen-c, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preparation and filing of premium tax returns by insurance companies; payment of tax; annual financial statements.

Be it enacted by the Legislature of West Virginia:

That sections fourteen and fourteen-c, article three, 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 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions.

§33-3-14c. Computation of tax; payment.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions.

1. Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. Such insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums (whether designated as a premium or by some other name) collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of such direct premiums made during such calendar year, if any, and transmit with such return to the commissioner a remittance in full for the tax due. The tax shall be a sum equal to two percent of the gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policies, and shall also include any additional tax due under section fourteen-a of this section. All taxes received by the commissioner shall be paid by him into the state treasury for the benefit of the state fund.

§33-3-14c. Computation of tax; payment.

1. The taxes levied hereunder shall be due and payable in quarterly installments on or before the twenty-fifth day of the
month succeeding the end of the quarter in which they accrue, except for the fourth quarter, for which taxes shall be due and payable on or before the first day of March of the succeeding year. The insurer subject to making such payments shall, by the twenty-fifth day of the month succeeding the close of the quarter, except the fourth quarter as provided above prepare an estimate of the tax based on the estimated amount of taxable premiums during the preceding calendar quarter, less adjustments to the gross amount of direct premiums from the preceding quarter, sign the same by its president or secretary, under oath, and mail the same together with a remittance of the amount of tax to the office of the commissioner.

Any insurer failing or refusing to pay estimated taxes for more than thirty days after the time specified is liable for a civil penalty of up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. Failure of an insurer to make quarterly payments, if required, of at least one fourth of either the total tax paid during the preceding calendar year or eighty percent of the actual tax for the current calendar year is considered the same as a failure or refusal to pay the estimated taxes and subjects the insurer to the penalties provided in this section. The amount of estimated taxes and the penalties collected shall be paid to the commissioner and he may suspend the insurer until estimated taxes and penalty, should any penalty be imposed, are fully paid.

CHAPTER 115

(S. B. 602—By Mr. Heck)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credits given against premium tax to insurance companies for investment in West Virginia securities.
Be it enacted by the Legislature of West Virginia:

That section fourteen-b, article three, 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 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14b. Credits against premium tax for investment in West Virginia securities.

If the annual statement of any insurance company covering a calendar year shows it to have investments at the close of said year in West Virginia securities, as hereinafter defined, of as much as twenty-five percent of its admitted assets, it shall be entitled to a credit against the premium tax levied by section fourteen of this article and the premium tax levied by section fourteen-a of this article in an amount equal to one hundred percent of such tax for such calendar year.

West Virginia securities, as used in this section, shall mean real estate situate in this state; bonds or interest-bearing notes or obligations of this state; bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political subdivision of this state; revenue bonds issued by any West Virginia state agency, board, department or commission authorized to issue such bonds by the laws of this state; bonds or notes secured by mortgages or deeds of trust on real estate situate in this state; securities of corporations organized and existing under the laws of this state including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stock of such corporations; cash balances in regularly established national and state banks in this state reflected as an asset in such annual statement; and investment shares and investment share accounts in federally insured savings and loan associations in this state.
AN ACT to amend and reenact section fourteen-d, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the additional fire and casualty insurance premium tax dedicated to policemen’s and firemen’s pension and relief funds and volunteer fire departments; and certain premiums exempt.

Be it enacted by the Legislature of West Virginia:

That section fourteen-d, article three, 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 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue for 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 imposed, 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 returned to policyholders because of cancellation of policies, for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance shall not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collec-
tion of the regular premium tax are applicable to the levy, imposition and collection of the additional tax.

All moneys collected from this additional tax shall be received by the commissioner and paid by him into a special account in the state treasury, designated the municipal pensions 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 hundred 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 treasurer 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 calendar year thereafter, the state fire marshal shall report to the state treasurer 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 hundred eighty-three, and before the first day of September of each calendar year thereafter, the state treasurer shall allocate and authorize for distribution 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 have allocated and authorized for distribution 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 shall receive a share 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.

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CHAPTER 117

(H. B. 1813—By Mr. Lewis)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section thirty-one-b, relating to nondiscriminatory automobile liability insurance rates for handicapped persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31b. Nondiscriminatory automobile insurance rates for handicapped persons.

1 No insurer, in determining rates to be charged for a policy or contract of bodily injury liability insurance or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of a motor vehicle, may discriminate in any manner on the basis of an insured's or potential insured's physical handicap.

CHAPTER 118

(H. B. 1662—By Mr. Riffle)

(Passed February 28, 1983: in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty, article thirteen, chapter thirty-three of said code, all relating to the standard valuation law for life insurance policies and to the standard nonforfeiture law for life insurance policies.

Be it enacted by the Legislature of West Virginia:

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

Article


13. Life Insurance.

ARTICLE 7. ASSETS AND LIABILITIES.


1 (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting insurance in this state, except that in the case of an alien insurer such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and method (net level premium method or other) used in the calculation of such reserves.

All valuations made by him or by his authority shall be made upon the net premium basis.

In every case the standard of valuation employed shall be stated in his annual report.

In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or cause to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(2) This subsection shall apply to only those policies and contracts issued prior to the original operative date of
the Standard Nonforfeiture Law (now section thirty, article thirteen of this chapter). All valuations shall be according to the standard of valuations adopted by the insurer for the obligations to be valued. Any insurer may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligation for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the insurer adopts no standard, said legal minimum standard shall be used.

Except as otherwise provided in paragraph (B), subdivision (a), subsection (3), the legal minimum standard for contracts issued before the first day of January, in the year one thousand nine hundred one, shall be actuaries' or combined experience table of mortality with interest at four percent per annum, and for contracts issued on or after said date shall be the "American Experience Table" of mortality with interest at three and one-half percent per annum, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts shall be that provided by this subsection but replacing the interest rates specified in this subsection by an interest rate of five percent per annum. Policies issued by insurers doing business in this state may provide for not more than one-year preliminary term insurance:

Provided, That if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereof in less than twenty years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of
such a twenty payment life preliminary term policy and a full reserve at such time of such a limited payment life or endowment policy.

The commissioner may vary the standards of interest and mortality in the case of alien insurers and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) Except as otherwise provided in paragraphs (B) to (G), subdivision (a) of this subsection, this subsection shall apply to only those policies and contracts issued on or after the original operative date of the Standard Nonforfeiture Law (now section thirty, article thirteen of this chapter).

(a) (A) Except as otherwise provided in paragraphs (B) to (G) of this subdivision, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation methods defined in subdivisions (b), (c) and (f), five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the third day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on or after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter, and the Commissioners 1958...
Standard Ordinary Mortality Table for such policies issued on or after the operative date of subsection (4a), section thirty, article thirteen of this chapter and prior to the operative date of subsection (4c), section thirty, article thirteen of this chapter: Provided, That for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter (I) the Commissioners 1980 Standard Ordinary Mortality Table or (II) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year selection mortality factors or (III) any ordinary mortality table, adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (4b), section thirty, article thirteen of this chapter, for such policies issued on or after such operative date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, — the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(iv) For group annuity and pure endowment contracts,
excluding any disability and accidental death benefits in such
policies, — the Group Annuity Mortality Table for 1951, or, at the option of the company, any of the tables or modification of tables specified for individual annuity and pure endowment contracts;

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, — for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the one thousand nine hundred thirty to one thousand nine hundred fifty termination rates of the one thousand nine hundred fifty-two disability study of the society of actuaries, with due regard to the type of benefits or any tables of disablement rates and termination rates, adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(vi) For accidental death benefits in or supplementary to policies, — for policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after the first day of January, one thousand nine hun-
dred sixty-one and prior to the first day of January, one
thousand nine hundred sixty-six, either such table or,
at the option of the company, the Inter-Company
Double Indemnity Mortality Table; and for policies issued
prior to the first day of January, one thousand nine hun-
dred sixty-one, the Inter-Company Double Indemnity Mortality
Table. Either table shall be combined with a mortality table
permitted for calculating the reserves for life insurance policies;
and
(vii) For group life insurance, life insurance issued on the
substandard basis and other special benefits, — such tables
as may be approved by the commissioner.

(B) Except as provided in paragraphs (C) to (G), the
minimum standard for the valuation of all individual annuity
and pure endowment contracts issued on or after the operative
date of this paragraph (B), as defined herein, and for all
annuities and pure endowments purchased on or after such
operative date under group annuity and pure endowment
contracts, shall be the commissioners reserve valuation methods
defined in subdivisions (b) and (c) and the following tables
and interest rates;

(i) For individual annuity and pure endowment contracts
issued prior to the sixth day of April, one thousand nine
hundred seventy-seven, excluding any disability and accidental
death benefits in such contracts, — the 1971 Individual
Annuity Mortality Table, or any modification of this table
approved by the commissioner, and six percent interest for
single premium immediate annuity contracts, and four percent
interest for all other individual annuity and pure endowment
contracts;

(ii) For individual single premium immediate annuity
contracts issued on or after the sixth day of April, one
thousand nine hundred seventy-seven, excluding any disability
and accidental death benefits in such contracts, — the 1971
Individual Annuity Mortality Table or any individual annuity
mortality table, adopted after one thousand nine hundred
eighty by the National Association of Insurance Commis-

missioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest;

(iii) For individual annuity and pure endowment contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, — the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts, and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(iv) For all annuities and pure endowments purchased prior to the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest; and

(v) For all annuities and pure endowments purchased on or after the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, — the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after one thousand nine hundred eighty by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.
After the third day of June, one thousand nine hundred seventy-four, any company may file with the commissioner a written notice of its election to comply with the provisions of this paragraph (B) after a specified date before the first day of January, one thousand nine hundred seventy-nine, which shall be the operative date of this paragraph (B) for such company, provided that a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph (B) for such company shall be the first day of January, one thousand nine hundred seventy-nine.

(C) The interest rates used in determining the minimum standard for the valuation of:

(i) All life insurance policies issued in a particular calendar year, on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter;

(ii) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;

(iii) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(iv) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subsection.

(D) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent (1/4 of 1%):

(i) For life insurance,

\[ I = 0.03 + W(R1 - 0.03) + \frac{W}{2}(R2 - 0.09); \]
(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

\[ I = 0.03 + W (R - 0.03) \]

where \( R_1 \) is the lesser of \( R \) and 0.09;

\( R_2 \) is the greater of \( R \) and 0.09.

\( R \) is the reference interest rate defined in this section and \( W \) is the weighting factor defined in this section.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (ii) above, the formula for life insurance stated in (i) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in (ii) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (ii) above shall apply; and

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (ii) above shall apply.

However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent (1/2 of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately
preceding calendar year. For purposes of applying the im-
mediately preceding sentence, the calendar year statutory 
valuation interest rate for life insurance policies issued in a 
calendar year shall be determined for one thousand nine 
hundred eighty (using the reference interest rate defined for 
one thousand nine hundred seventy-nine) and shall be deter-
mined for each subsequent calendar year regardless of when 
subsection (4c), section thirty, article thirteen of this chapter 
becomes operative.

(E) The weighting factors referred to in the formulas stated 
above are given in the following tables:

(i) Weighting Factors for Life Insurance:

<table>
<thead>
<tr>
<th>Guarantee</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td></td>
</tr>
<tr>
<td>(Years)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>.50</th>
<th>.45</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.45</td>
<td>.35</td>
</tr>
<tr>
<td>More than 20</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For life insurance, the guarantee duration is the maximum 
number of years the life insurance can remain in force on a 
basis guaranteed in the policy or under options to convert 
to plans of life insurance with premium rates or nonforfeiture 
values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annui-
ties and for annuity benefits involving life contingencies 
aruising from other annuities with cash settlement options and 
guaranteed interest contracts with cash settlement options:

.80

(iii) Weighting factors for other annuities and for guaran-
teed interests contracts, except as stated in (ii) above, shall be 
as specified in tables (a), (b) and (c) below, according to the 
rules and definitions in (d), (e) and (f) below:

(a) For annuities and guaranteed interest contracts valued 
on an issue year basis:
<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>5 or less:</td>
<td>.80</td>
</tr>
<tr>
<td>More than 5, but not more than 10:</td>
<td>.75</td>
</tr>
<tr>
<td>More than 10, but not more than 20:</td>
<td>.65</td>
</tr>
<tr>
<td>More than 20:</td>
<td>.45</td>
</tr>
</tbody>
</table>

(b) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (a) above:

(c) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (a) or derived in (b) increased by: .05 .05 .05

d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence;

e) Plan type as used in the above tables is defined as follows:
Plan Type A:

At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or (2) without such adjustment but in installments over five years or more or (3) as an immediate life annuity or (4) no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or (2) without such adjustment but in installments over five years or more or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(f) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed
interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(F) The reference interest rate referred to in paragraph (D) shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) above, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc;

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) above, with guarantee duration of ten years or less, the average over
a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc;

(v) For other annuities with no cash settlement options for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc;

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (ii) above, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(G) In the event that Moody's Corporate Bond Yield Average — Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average — Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(b) Except as otherwise provided in subdivisions (c) and (f), reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed bene-
The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one percent per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due:

Provided, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy;

(B) A net one-year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subdivision (f), be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph of this subdivision (b) and the reserve as of such policy anniversary...
calculated as described in that paragraph, but with (i) the value defined in subparagraph (A) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in paragraphs (A), (C), (D), (E), (F) and (G) of subdivision (a) of this subsection shall be used.

Reserves according to the commissioners reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, (iii) disability and accidental death benefits in all policies and contracts and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subdivision (b), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(c) This subdivision shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual
retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(d) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in subdivisions (b), (c), (f) and (g) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(e) Reserves for any category of policies, contracts or benefits as established by the commissioner may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

Any such company which at any time shall have adopted
any standard of valuation producing greater aggregate re-
serves than those calculated according to the minimum stan-
dard herein provided may, with the approval of the com-
missioner, adopt any lower standard of valuation, but not
lower than the minimum herein provided.

(f) If in any contract year the gross premium charged by
any life insurer on any policy or contract is less than the
valuation net premium for the policy or contract calculated
by the method used in calculating the reserve thereon, but
using the minimum valuation standards of mortality and rate
of interest, the minimum reserve required for such policy or
contract shall be the greater of either the reserve calculated
according to the mortality table, rate of interest and method
actually used for such policy or contract, or the reserve
calculated by the method actually used for such policy or
contract but using the minimum valuation standards of
mortality and rate of interest and replacing the valuation
net premium by the actual gross premium in each contract
year for which the valuation net premium exceeds the actual
gross premium. The minimum valuation standards of mortality
and rate of interest referred to in this section are those stan-
dards stated in paragraphs (A), (C), (D), (E), (F) and (G)
of subdivision (a): Provided, That for any life insurance policy
issued on or after the first day of January, one thousand
nine hundred eighty-five, for which the gross premium in the
first policy year exceeds that of the second year and for
which no comparable additional benefit is provided in the
first year for such excess and which provides an endowment
benefit or a cash surrender value or a combination thereof
in an amount greater than such excess premium, the fore-
going provisions of this subdivision (f) shall be applied as if
the method actually used in calculating the reserve for such
policy were the method described in subdivision (b), ignoring
the second paragraph of subdivision (b). The minimum
reserve at each policy anniversary of such a policy shall be
the greater of the minimum reserve calculated in accordance
with subdivision (b), including the second paragraph of that
subdivision and the minimum reserve calculated in accor-
dance with this subdivision (f).
(g) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on the estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subdivisions (b), (c) and (f), the reserves which are held under any such plan must:

(A) Be appropriate in relation to the benefits and the pattern of premiums for the plan; and

(B) Be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the commissioner.

ARTICLE 13. LIFE INSURANCE.


(1) In the case of policies issued on or after the original operative date of this provision, no policy of life insurance, except as stated in subsection six, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with subsection (5a) of this law:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits;

(b) That, upon surrender of the policy within sixty days
after the due date of any premium payment in default after
premiums have been paid for at least three full years, the
insurer will pay, in lieu of any paid-up nonforfeiture benefit,
a cash surrender value of such amount as may be hereinafter specified;

(c) That a specified paid-up nonforfeiture benefit shall
become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(e) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy; and

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required
by or pursuant to the insurance law of the state in which
the policy is delivered; an explanation of the manner in
which the cash surrender values and the paid-up nonforfeiture
benefits are altered by the existence of any paid-up additions
credited to the policy or any indebtedness to the company on
the policy; if a detailed statement of the method of computa-
tion of the values and benefits shown in the policy is not
stated therein a statement that such method of computation
has been filed with the insurance supervisory official of the
state in which the policy is delivered; and a statement of the
method to be used in calculating the cash surrender value
and paid-up nonforfeiture benefits available under the policy
on any policy anniversary beyond the last anniversary for which
such values and benefits are consecutively shown in the
policy.

Any of the foregoing provisions or portions thereof, not
applicable by reason of the plan of insurance may, to the
extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the payment
of any cash surrender value for a period of thirty days after
demand therefor with surrender of the policy.

(2) Any cash surrender value available under the policy
in the event of default in a premium payment due on any
policy anniversary, whether or not required by subsection
(1), shall be an amount not less than the excess, if any, of
the present value, on such anniversary, of the future guaran-
teed benefits which would have been provided for by the
policy, including any existing paid-up additions, if there
had been no default, over the sum of (i) the then present
value of the adjusted premiums as defined in subsections
(4), (4a), (4b) and (4c), corresponding to premiums which
would have fallen due on and after such anniversary, and
(ii) the amount of any indebtedness to the insurer on the
policy: Provided, That for any policy issued on or after the
operative date of subsection (4c) as defined therein, which
provides supplemental life insurance or annuity benefits at
the option of the insured and for an identifiable additional
premium by rider or supplemental policy provision, the cash
surrender value referred to in the first paragraph of this
subsection shall be an amount not less than the sum of the
cash surrender value as defined in such paragraph for an
otherwise similar policy issued at the same age without such
rider or supplemental policy provision and the cash surrender
value as defined in such paragraph for a policy which pro-
vides only the benefits otherwise provided by such rider or
supplemental policy provision: Provided, however, That for
any family policy issued on or after the operative date of
subsection (4c) as defined therein, which defines a primary
insured and provides term insurance on the life of the spouse
of the primary insured expiring before the spouse’s age
seventy-one, the cash surrender value referred to in the
first paragraph of this subsection shall be an amount not
less than the sum of the cash surrender value as defined in
such paragraph for an otherwise similar policy issued at the
same age without such term insurance on the life of the
spouse and the cash surrender value as defined in such para-
graph for a policy which provides only the benefits otherwise
provided by such term insurance on the life of the spouse.

Any cash surrender value available within thirty days after
any policy anniversary under any policy paid up by comple-
tion of all premium payments or any policy continued under
any paid-up nonforfeiture benefit, whether or not required
by subsection (1), shall be an amount not less than the
present value, on such anniversary, of the future guaranteed
benefits provided for by the policy, including any existing
paid-up additions decreased by any indebtedness to the in-
surer on the policy.

(3) Any paid-up nonforfeiture benefit available under the
policy in the event of default in a premium payment due on
any policy anniversary shall be such that its present value
as of such anniversary shall be at least equal to the cash
surrender value then provided for by the policy or, if none
is provided for, that cash surrender value which would have
been required by this section in the absence of the condition
that premiums shall have been paid for at least a specific
period.

(4) This subsection (4) shall not apply to policies issued
on or after the operative date of subsection (4c) as defined
therein. Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a sub-standard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: Provided, That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: Provided, That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.
The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in subsections (4a) and (4b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.
(4a) This subsection (4a) shall not apply to ordinary policies issued on or after the operative date of subsection (4c) as defined therein. In the case of ordinary policies issued on or after the operative date of this subsection (4a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after the third day of June, one thousand nine hundred seventy-four, and prior to the sixth day of April, one thousand nine hundred seventy-seven, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after the sixth day of April, one thousand nine hundred seventy-seven, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, it any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the third day of June, one thousand nine hundred fifty-nine, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred sixty-six. After
the filing of such notice, then upon such specified date (which
shall be the operative date of this subsection for such com-
pany), this subsection shall become operative with respect
to the ordinary policies thereafter issued by such company.
If a company makes no such election, the operative date of
this subsection for such company shall be the first day of
January, one thousand nine hundred sixty-six.

(4b) This subsection (4b) shall not apply to industrial
policies issued on or after the operative date of subsection
(4c) as defined herein. In the case of industrial policies
issued on or after the operative date of this subsection (4b)
as defined herein, all adjusted premiums and present values
referred to in this section shall be calculated on the basis
of the Commissioners 1961 Standard Industrial Mortality
Table and the rate of interest specified in the policy for
calculating cash surrender values and paid-up nonforfeiture
benefits provided that such rate of interest shall not exceed
three and one-half percent per annum except that a rate
of interest not exceeding four percent per annum may be
used for policies issued on or after the third day of June,
one thousand nine hundred seventy-four, and prior to the
sixth day of April, one thousand nine hundred seventy-seven,
and a rate of interest not exceeding five and one-half percent
per annum may be used for policies issued on or after the
sixth day of April, one thousand nine hundred seventy-seven,
except that for any single premium whole life or endowment
insurance policy a rate of interest not exceeding six and
one-half percent per annum may be used: Provided, That in
calculating the present value of any paid-up term insurance
with accompanying pure endowment, if any, offered as a
nonforfeiture benefit, the rates of mortality assumed may be
not more than those shown in the Commissioners 1961
Industrial Extended Term Insurance Table: Provided, however,
That for insurance issued on a substandard basis, the cal-
culation of any such adjusted premiums and present values
may be based on such other table of mortality as may be
specified by the company and approved by the commissioner.

After the effective date of this subsection (4b), any com-
pany may file with the commissioner a written notice of its
election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subsection for such company shall be the first day of January, one thousand nine hundred sixty-eight.

(4c) (a) This subsection shall apply to all policies issued on or after the operative date of this subsection (4c) as defined herein. Except as provided in the seventh paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (iii) one hundred twenty-five percent of the nonforfeiture net level premium as hereinafter defined: Provided, That in applying the percentage specified in (iii) above no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined;

(b) The nonforfeiture net level premium shall be equal
to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due;

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change;

(d) Except as otherwise provided in the seventh paragraph of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy;

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be
the sum of (i) one percent of the excess, if positive, of
the average amount of insurance at the beginning of each of
the first ten policy years subsequent to the change over the
average amount of insurance prior to the change at the
beginning of each of the first ten policy years subsequent
to the time of the most recent previous change, or, if there
has been no previous change, the date of issue of the policy;
and (ii) one hundred twenty-five percent of the increase,
if positive, in the nonforfeiture net level premium;

(f) The recalculated nonforfeiture net level premium shall
be equal to the result obtained by dividing (A) by (B) where:

(A) Equals the sum of

(i) The nonforfeiture net level premium applicable prior
to the change times the present value of an annuity of one
per annum payable on each anniversary of the policy on or
subsequent to the date of the change on which a premium
would have fallen due had the change not occurred; and

(ii) The present value of the increase in future guaranteed
benefits provided for by the policy;

(B) Equals the present value of an annuity of one per
annum payable on each anniversary of the policy on or sub-
sequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this sub-
section to the contrary, in the case of a policy issued on
a substandard basis which provides reduced graded amounts
of insurance so that, in each policy year, such policy has
the same tabular mortality cost as an otherwise similar
policy issued on the standard basis which provides higher
uniform amounts of insurance, adjusted premiums and present
values for such substandard policy may be calculated as if
it were issued to provide such higher uniform amounts of
insurance on the standard basis;

(h) All adjusted premiums and present values referred to
in this section shall for all policies of ordinary insurance
be calculated on the basis of (i) the Commissioners 1980
Standard Ordinary Mortality Table or (ii) at the election of
the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year:

Provided, That:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year;

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (1), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any;

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance;

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables;
(vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Ordinary Mortality Table with or without ten-year select mortality factors or for the Commissioners 1980 Extended Term Insurance Table; and

(vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

(i) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent (1/4 of 1%);

(j) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form; and

(k) After the effective date of this subsection (4c), any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the first day of January, one thousand nine hundred eighty-nine, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this section for such company shall be the first day of January, one thousand nine hundred eighty-nine.
(4d) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (1), (2), (3), (4), (4a), (4b) and (4c) herein, then:

(a) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (1), (2), (3), (4), (4a), (4b) or (4c) herein;

(b) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the commissioner.

(5) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (2), (3), (4), (4a), (4b) and (4c) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of subsection two, additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or sup-
522 supplemental policy provision to which, if issued as a separate
523 policy, this subsection would not apply, (v) as term in-
524 surance on the life of a child or on the lives of children
525 provided in a policy on the life of a parent of the child,
526 if such term insurance expires before the child's age is
527 twenty-six, is uniform in amount after the child's age is one,
528 and has not become paid up by reason of the death of a
529 parent of the child, and (vi) as other policy benefits addi-
530 tional to life insurance and endowment benefits, and pre-
531 miums for all such additional benefits, shall be disregarded
532 in ascertaining cash surrender values and nonforfeiture bene-
533 fits required by this section, and no such additional bene-
534 fits shall be required to be included in any paid-up nonfor-
535 feiture benefits.

536 (5a) This subsection, in addition to all other applicable
537 subsections of this law, shall apply to all policies issued on or
538 after the first day of January, one thousand nine hundred
539 eighty-five. Any cash surrender value available under the policy
540 in the event of default in a premium payment due on any
541 policy anniversary shall be in an amount which does not
542 differ by more than two tenths of one percent of either the
543 amount of insurance, if the insurance be uniform in amount,
544 or the average amount of insurance at the beginning of each
545 of the first ten policy years, from the sum of (a) the
546 greater of zero and the basic cash value hereinafter specified
547 and (b) the present value of any existing paid-up additions
548 less the amount of any indebtedness to the company under the
549 policy.

550 The basic cash value shall be equal to the present
551 value, on such anniversary, of the future guaranteed bene-
552 fits which would have been provided for by the policy, ex-
553 cluding any existing paid-up additions and before deduc-
554 tion of any indebtedness to the company, if there had been
555 no default, less the then present value of the nonforfeiture
556 factors, as hereinafter defined, corresponding to premiums
557 which would have fallen due on and after such anniversary:
558 Provided, That the effects on the basic cash value of supple-
559 mental life insurance or annuity benefits or of family coverage,
560 as described in subsection (2) or (4), whichever is ap-
applicable, shall be the same as are the effect specified in subsection (2) or (4), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (4) or (4c), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(b) Must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (a) may apply to fewer than five consecutive policy years: Provided, That no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (4) or (4c), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this law. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium
payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (1), (2), (3), (4c) and (5). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as items (i) through (vi) in subsection (5) shall conform with the principles of this subsection (5a).

(6) This section shall not apply to any of the following:

(a) Reinsurance;

(b) Group insurance;

(c) Pure endowment;

(d) Annuity or reversionary annuity contract;

(e) Term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(f) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections (4), (4a), (4b) and (4c), is less than the adjusted premium so calculated on a policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, or which uniform premiums are payable during the entire term of the policy;

(g) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (2), (3), (4), (4a), (4b) and (4c), exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; and

(h) Policy which shall be delivered outside this state
through an agent or other representative of the insurer issuing
the policy. For purposes of determining the applicability of
this section, the age at expiry for a joint term life insurance
policy shall be the age at expiry of the oldest life.

CHAPTER 119
(H. B. 1603—By Mr. Goff)
[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article thirteen, chapter thirty-three 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 eight-a; and to amend and reenact section two, article twenty-three of said chapter, all relating to the maximum rate of interest on life insurance policy loans; reinstatements; applicability of other provisions of chapter.

Be it enacted by the Legislature of West Virginia:

That section twelve, article thirteen, chapter thirty-three 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 eight-a; and that section two, article twenty-three of said chapter be amended and reenacted, all to read as follows:

Article
13. Life Insurance.
14. Fraternal Benefit Societies.

ARTICLE 13. LIFE INSURANCE.

§33-13-8a. Maximum rate of interest on policy loans.
§33-13-12. Reinstatements.

§33-13-8a. Maximum rate of interest on policy loans.

1 (a) For purposes of this section the "published monthly
2 average" means:
3 (1) Moody's corporate bond yield average—monthly aver-
(2) In the event that Moody’s corporate bond yield average—monthly average corporates is no longer published, a substantially similar average, established by regulation issued by the commissioner.

(b) Policies issued on or after the first day of June, one thousand nine hundred eighty-three, shall provide for maximum policy loan interest rates as follows:

(1) A provision permitting a maximum interest rate of not more than eight percent per annum; or

(2) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(c) The rate of interest charged on a policy loan made under subdivision (2), subsection (b) of this section shall not exceed the higher of the following:

(1) The published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(2) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(d) If the maximum rate of interest is determined pursuant to subdivision (2), subsection (b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(e) The maximum rate for each policy shall be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(1) The rate being charged may be increased whenever such increase as determined under subsection (c) of this section would increase that rate by one-half percent or more per annum; and
(2) The rate being charged shall be reduced whenever such reduction as determined under subsection (c) of this section would decrease that rate by one-half percent or more per annum.

(f) The life insurer shall:

(1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan within forty-five days after making the loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subdivision (3) below;

(3) Send to policyholder with loans reasonable advance notice of any increase in the rate; and

(4) Include in the notices required above the substance of the pertinent provisions of subsections (b) and (d) of this section.

(g) No policy shall terminate in a policy year as the sole result of a change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(h) The substance of the pertinent provisions of subsections (b) and (d) shall be set forth in the policies to which they apply.

(i) For purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

(2) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

(3) The term "policyholder" includes the owner of the policy
or the person designated to pay premiums as shown on the records of the life insurer; and

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(j) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

(k) The provisions of this section shall not apply to any insurance contract issued before the first day of June, one thousand nine hundred eighty-three, unless the policyholder agrees in writing to the applicability of such provisions.

§33-13-12. Reinstatements.

There shall be a provision that unless the policy has been surrendered for its cash surrender value or unless the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three years from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding six percent per annum compounded annually. However, with respect to policies issued on or after the first day of June, one thousand nine hundred eighty-three, the rate of interest on the payment or reinstatement of any other indebtedness to the insurer upon the policy shall be as provided in section eight-a of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article ten (rehabilitation and liquidation), article eleven (unfair trade practices) and article thirteen (life insurance).
CHAPTER 120
(S. B. 476—By Mr. Heck, Mr. Nelson and Mr. Kaufman)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b; to amend article sixteen of said chapter by adding thereto a new section, designated section three-e; and to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-a, all relating to providing that accident and sickness policies, group accident and sickness policies and hospital, medical service, dental and health service corporation policies cover nonsalaried, primary health care nursing services; and providing definition.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-b; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-e; and that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-a, all to read as follows:

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4b. Policies to cover nursing services; definition.

(a) Any insurer who, on or after the first day of January, one thousand nine hundred eighty-four, delivers or issues a policy of accident and sickness insurance in this state under the provisions of this article shall make available as benefits to all subscribers and members
coverage for primary health care nursing services as
hereinafter set forth if such services are currently being
reimbursed when rendered by any other duly licensed
health care practitioner. No insurer may be required
to pay for duplicative health care services actually pro-
vided by both a registered professional nurse or licensed
midwife and other health providers.

(b) For purposes of this section, section three-e, article
sixteen and section seven-a, article twenty-four of
this chapter, “primary health care nursing services”
includes nursing care rendered by a nonsalaried duly
licensed registered professional nurse engaged in private
nursing practice or partnership with other health care
providers within the lawful scope of practice as defined
in section one, article seven, chapter thirty of this code,
and care rendered by a licensed nurse midwife or mid-
wife as this occupation is defined in section one, article
fifteen, chapter thirty of this code, and which care is
within the scope of duties for such licensed nurse-midwife
or midwife as permitted by the provisions of section
seven, article fifteen of said chapter thirty.

(c) Nothing in this section may be construed to permit
any registered professional nurse licensee or midwife
licensee to perform professional services beyond such
individual's areas of professional competence as estab-
lished by education, training and experience.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.
§33-16-3e. Policies to cover nursing services.

(a) Any insurer who, on or after the first day of
January, one thousand nine hundred eighty-four, delivers
or issues a policy of group accident and sickness insurance
in this state under the provisions of this article shall
make available as benefits to all subscribers and mem-
ers coverage for primary health care nursing services as
defined in section four-b, article fifteen of this chapter,
if such services are currently being reimbursed when
rendered by any other duly licensed health care prac-
titioner. No insurer may be required to pay for duplica-
tive health care services actually provided by both a
12 registered professional nurse or licensed midwife and
13 other health providers.

14 (b) Nothing in this section may be construed to permit
15 any registered professional nurse licensee or midwife
16 licensee to perform professional services beyond such
17 individual's areas of professional competence as estab-
18 lished by education, training and experience.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE COR-
PORATIONS.

§33-24-7a. Contracts to cover nursing service.

1 (a) Any contract made under the provisions of this
2 article shall, on or after the first day of January, one
3 thousand nine hundred eighty-four, contain a provision
4 that the corporation shall make available as covered
5 benefits to all subscribers and members coverage for
6 primary health care nursing services as defined in sec-
7 tion four-b, article fifteen of this chapter, if such services
8 are currently being reimbursed when rendered by any
9 other duly licensed health care practitioner. No corpora-
10 tion may be required to pay for duplicative health care
11 services actually provided by both a registered profes-
12 sional nurse or licensed midwife and other health pro-
13 viders.

14 (b) Nothing in this section may be construed to permit
15 any registered professional nurse licensee or midwife
16 licensee to perform professional services beyond such
17 individual's scope of professional competence as estab-
18 lished by education, training and experience.

CHAPTER 121

(H. B. 1336—By Mr. Holt and Mr. Hutchinson)

[Passed March 4, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section eleven; and to amend article sixteen of said chapter by adding thereto a new section, designated section seven, all relating to prohibiting individual and group hospital indemnity insurance policies from excluding coverage for confinement in government-operated hospitals.

\textit{Be it enacted by the Legislature of West Virginia:}

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven; and that article sixteen of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

\textbf{Article}
\begin{itemize}
  \item 15. Accident and Sickness Insurance.
  \item 16. Group Accident and Sickness Insurance.
\end{itemize}

\textbf{ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.}

\textbf{§33-15-11. Hospital indemnity policies not to exclude coverage for confinement in government hospital.}

1 No policy providing hospital indemnity coverage may exclude coverage because of confinement in a hospital operated by the federal or state government.

\textbf{ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.}

\textbf{§33-16-7. Hospital indemnity policies not to exclude coverage for confinement in government hospital.}

1 No policy providing hospital indemnity coverage may exclude coverage because of confinement in a hospital operated by the federal or state government.

\textbf{CHAPTER 122}

(Com. Sub. for H. B. 1287—By Mr. Farley and Mr. Shiflet)

[Passed February 28, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section six, article thirty of said chapter, all relating to other provisions of chapter applicable; relating to mine subsidence coverage.

Be it enacted by the Legislature of West Virginia:

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

Article 22. Farmers' Mutual Fire Insurance Companies.  
30. Mine Subsidence Insurance.

ARTICLE 22. FARMERS’ MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

Each such company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any former member of a farmers’ mutual fire insurance company who is no longer a member of such company at the time the order to show cause was issued, article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agents’ license fee shall be one dollar, article twenty-six (West Virginia Insurance Guaranty Association Act), and article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers’ mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so; but only to the extent such provisions are not inconsistent with the provisions of this article.
ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-6. Mine subsidence coverage.

Beginning the first day of October, one thousand nine hundred eighty-two, every insurance policy issued or renewed insuring on a direct basis a structure located in this state shall include, at a separately stated premium, insurance for loss occurring on or after October first, one thousand nine hundred eighty-two, caused by mine subsidence if requested by the insured. The premium charged for coverage shall be the same as the premium level set by the board. The loss coverage shall be the loss in excess of two percent of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars nor more than five hundred dollars; and total insured value reinsured by the board shall not exceed fifty thousand dollars.

CHAPTER 123
(H. B. 2023—By Mr. Gilliam)

[Passed March 12, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two of said chapter; to amend and reenact section twelve, article four of said chapter; to amend and reenact sections two, six, eight and nine, article six of said chapter; and to amend and reenact section six-a, article nine, chapter eighteen of said code, all relating to depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer; itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions; treasurer authorized to provide check-cashing service; establishment and audit of cash funds; definitions; costs and expenses; fees for services; investment funds established; management thereof; permissible investments; and school finances.
Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

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 depositaries 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.

7. 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.

12. Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision
or agency thereof to any political subdivision, person, firm
or corporation except moneys paid from investment accounts.

Investment accounts shall be those accounts established
by the treasurer or board of investments for the buying and
selling of securities for investment for the state of West
Virginia or any official, department, board, commission or
agency thereof or to meet obligations to paying agents or
for paying charges incurred for the custody, safekeeping and
management of such securities pursuant to the provisions of
section five, article five of this chapter, or for paying the
charges of any bank or trust company acting as paying agent
or copaying agent for a bond issue of the state pursuant to
the provisions of section seven-a, article one, chapter fifty-
seven of this code.

The board of investments shall promulgate rules and
regulations, in accordance with the provisions of chapter
twenty-nine-a of the code of West Virginia, as amended,
concerning depositories for receipt accounts and investment
accounts prescribing the selection criteria, procedures, com-
pensation and such other contractual terms as it considers
to be in the best interests of the state giving due considera-
tion 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 dis-
bursement accounts through competitive bidding by eligible
banks in this state. The board shall promulgate rules and
regulations, in accordance with the provisions of chapter twen-
ty-nine-a of the code of West Virginia, as amended, prescrib-
ing the procedures and criteria for such bidding and selec-
tion. It shall, in its invitations for bids, specify the approxi-
mate 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.
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.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

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 this code 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: Provided, That all moneys received out of appropriations made by the Congress of the United States shall be carried in special fund accounts, apart from the general revenues of the state, in the state treasury and all such moneys shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, excepting the following funds which shall be carried in separate accounts:

(a) All funds excluded by the provisions of section six, article eleven, chapter four of this code;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of the 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 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.

The state treasurer shall have authority to establish an imprest fund or funds in the office of any state agency or institution making proper application to him. To implement this authority the treasurer shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code. The treasurer or his designee shall annually audit all such funds and prepare a list of all such funds showing the location and amount as of fiscal year end, retaining such list as a permanent record of the treasurer's office until such time as the legislative auditor shall
have completed an audit of the imprest funds of all agencies and institutions involved.

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.

§12-4-12. Treasurer authorized to provide check-cashing service; establishment and audit of cash funds.

The treasurer may provide a check-cashing service at his office in the capitol building and may charge fees for such service for each check cashed and for each check returned for insufficient funds. For this purpose, he may establish from receipts in the treasury not more than two cash funds each in an initial amount not to exceed one hundred thousand dollars. He shall designate certain employees in his office who are to provide the service and have charge of such funds, and may require such employees to be bonded either individually or by blanket bonds. The cost of such bond or bonds shall be paid out of the treasurer's current expense appropriation.
The fees received for such service shall be deposited in the cash funds and itemized accounts of such receipts shall be maintained. Any check determined by the treasurer to be uncollectible shall be charged against the fund from which it was cashed. The legislative auditor shall, at least annually, but may at any time, audit the cash funds and all accounts and records relating to the service provided pursuant to this section. If the amount of either cash fund (after charges for uncollectible checks) exceeds one hundred thousand dollars at the conclusion of any audit, the treasurer shall transfer such excess to the general revenue fund.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.
§12-6-6. Costs and expenses; fees for services.
§12-6-8. Investment funds established; management thereof.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:

3 (1) "Board" means the West Virginia state board of investments;

5 (2) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (b), section eight of this article;

7 (3) "Consolidated pension fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

9 (4) "Local government account" means the account within the consolidated fund established pursuant to subsection (b), section eight of this article;

11 (5) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit in the local government account;

13 (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 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; or pension funds established on behalf of public employees of its political subdivisions and administered by the political subdivisions;

(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 fund (as defined in subdivision (6) of this section) and (b) the "school fund" established by section four, article XII of the state constitution.

§12-6-6. Costs and expenses; fees for services.
All costs and expenses of the board including fees of professional consultants, advisors and auditors, brokerage commissions and all other necessary expenses of the board incurred in the performance of its functions shall be proper charges against, and payable on a pro rata basis from, the earnings of the various funds managed by the board.

§12-6-8. Investment funds established; management thereof.
(a) There is hereby established a special investment fund to be managed by the board and designated as the "consolidated pension fund" for the common investment of pension
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4 funds. All administrators, custodians or trustees of the various pension funds are hereby authorized to make moneys available to the board for investment. Pension funds received by the board shall be deposited in the consolidated pension fund. Any security deposited by the various pension funds shall be valued at the prevailing market price on the day of deposit.

(b) There is hereby also established a special investment fund to be managed by the board and designated as the "consolidated fund." The consolidated fund shall consist of a special account for the common investment of state funds designated as the "state account" and a special account for the common investment of local government funds designated as the "local government account." Moneys in both accounts may be combined for the common investment of the consolidated fund on an equitable basis.

(c) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment. State funds received by the board shall be deposited in the state account.

(d) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of such political subdivision: Provided, That it first be determined by the treasurer for such political subdivision that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments. Local government funds received by the board pursuant to such agreements shall be deposited in the local government account. Any political subdivision may enter into an agreement with any state agency from which it receives funds to allow such funds to be transferred to their investment account with the state board of investments.

(e) Each county board of education through its treasurer is hereby authorized to enter into agreements with the board
of investments for the investment of moneys of such county board of education: *Provided, however,* That it first be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments.

(f) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section nine and subject to the restrictions contained in section ten of this article. The board shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall also establish such rules and regulations for the administration of the various funds and accounts established by this section as it shall deem necessary for the administration thereof, including, but not limited to: (1) The specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; (2) creation of reserves for losses; (3) provision for payment of expenses from earnings; and (4) distribution of the earnings in excess of such expenses or allocation of losses to the several participants in an equitable manner: *Provided,* That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest such moneys in accordance with the restrictions specially applicable thereto.

(g) The board shall at all times maintain and have available for public inspection a report containing monthly balances in the treasury, which said balances shall include, but not be limited to, the following:

(a) Total local government account balance.

(b) General revenue surplus balance.

(c) General revenue surplus appropriation account balance.
(d) State general revenue reappropriated account balance.

(e) State general revenue current account balance.

(f) Total state account balance.

(g) Total general revenue.

(h) Total of state account balance which is invested longer than overnight.

(i) Total of state account balance which is invested overnight.

The board shall not be required to make such information available until January first, one thousand nine hundred eighty-four: Provided, That the board shall have such reports available on a daily basis for each day the Legislature is in session.


Notwithstanding the restrictions which may otherwise be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(b) Any evidence of indebtedness issued by any of the following agencies: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association and Federal Farm Credit Banks;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situated within this state, if the payment thereof is substantially in-
sured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized; and

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter.
CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6a. County board of education treasurer authorized to make funds available to state board of investments; allocation of income.

Notwithstanding any other provision of this code, when it appears to any of the various county boards of education that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer’s county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments, the county board of education treasurer may, with the approval in writing of each county board of education whose funds are involved, make such funds available to the state board of investments for investment in accordance with the provisions of said article six, chapter twelve of the code. Any county board of education treasurer may enter into an agreement with any state agency from which they receive funds to allow such funds to be transferred to their investment account with the state board of investments.

Any income earned on such investment shall be allocated by such treasurer to the board of education whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the board of investments.

CHAPTER 124

(S. B. 321—By Mr. McGraw, Mr. President)

[Passed January 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a,
relating to requiring the board of investments to transfer moneys to the general revenue fund for timely payment of governmental services, with repayment to the board to be made with interest by June thirtieth, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9a. Transfers to the state.

1 Whenever the governor determines that the general revenues in the treasury available for expenditure are insufficient for timely payment of government services provided by general revenue appropriations, the board shall transfer such moneys from the consolidated fund to the general revenue fund of the state as are determined by the governor to be necessary to meet such payments. The total of such transfers shall not exceed fifty million dollars, and such transfers shall be repaid no later than the thirtieth day of June, one thousand nine hundred eighty-three, and shall be subject to interest equal to the actual interest rate earned by the consolidated fund on the day of each transfer.

CHAPTER 125

(Passed February 22, 1983; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section five, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to law-enforcement officer training and certification; and providing an exemption from such training and certification for any law-enforcement officer who has been employed in such capacity for a
period of not less than five consecutive years immediately prior to date of certification.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-nine, 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 29. LAW-ENFORCEMENT OFFICER TRAINING AND CERTIFICATION.

§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 certified: 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 requesting certification as hav-
ing met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements 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 reapplication, 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 certifiable as having met the minimum entry law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy. To receive 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 certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the governor's committee requesting certification. The application shall include notarized
statements as to the applicant’s 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-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement 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 requirements for certification, shall forward to the applicant documentation of certification.

(f) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state.

(g) Nothing in this article may be construed as prohibiting any governing body, civil service commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement
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qualification and training curricula promulgated by the governor's committee.

(h) 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 effective date of this article for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such provisions be mandatory during the five years next succeeding the effective date of this article for law-enforcement officers of a law-enforcement agency which does not employ a civil service system for its law-enforcement personnel: Provided, That such requirements shall be mandatory for all such law-enforcement officers until their law-enforcement officials apply for their exemption by submitting a written plan to the governor's committee which will reasonably assure compliance of all law-enforcement officers of their agencies within the applicable two or five-year period of exemption.

(i) Any person aggrieved by a decision of the governor's committee made pursuant to this article may contest such decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.

CHAPTER 126

(Com. Sub. for S. B. 514—By Mr. Rogers, Mr. Tomblin and Mr. Chafin)

[Passed March 5, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rates for legal advertisements; computation; and filing affidavits with secretary of state.

Be it enacted by the Legislature of West Virginia:

That section three, article three, 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 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.**

§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

1. (a) The rates which a publisher or proprietor of a qualified newspaper in West Virginia may charge and receive for a single or first publication of any legal advertisement set solid shall depend upon the bona fide circulation of such newspaper, as follows:

2. (1) Two cents per word if the qualified newspaper has a bona fide circulation of one thousand or less;

3. (2) Five cents per word if the qualified newspaper has a bona fide circulation of one thousand to ten thousand;

4. (3) Six and one-fourth cents per word if the qualified newspaper has a bona fide circulation of more than ten thousand but less than forty thousand; or

5. (4) Seven and one-fourth cents per word if the qualified newspaper has a bona fide circulation of forty thousand or more.

6. (b) In computing the number of words in a legal advertisement, not set solid, the basis shall be upon the size of type in which legal advertising is set by the qualified newspaper making the publication, and shall be computed at the legal rate as though the matter was solid type, that is to say, on the basis of eighty-four words to the single column inch in six point type, and fifty-four words to the single column inch in eight point type, and any other size type in proportion.

7. (c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section, and the cost of the second and each subsequent publication shall be seventy-five percent of the cost of the first publication computed as aforesaid.
32 (d) The rates provided for in this section may be charged on and after the first day of July, one thousand nine hundred eighty-three. Between the effective date of this section and the said first day of July, one thousand nine hundred eighty-three, the rates for publishing legal advertisements shall be those in effect immediately prior to the effective date of this section. The average bona fide circulation stated by each qualified newspaper in the statement filed by such newspaper with the United States post office department in November, one thousand nine hundred eighty-two, shall control the rate circulation classification of such qualified newspaper for the period from the first day of July, one thousand nine hundred eighty-three, until the first day of July, one thousand nine hundred eighty-four. On or before the first day of November, one thousand nine hundred eighty-four, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing fiscal year shall file with the secretary of state an affidavit stating the average bona fide circulation of such newspaper during the preceding calendar year, and sufficient facts shall be set forth in the affidavit to show whether such newspaper is a qualified newspaper. The average bona fide circulation stated in such affidavit by each qualified newspaper shall control the rate circulation classification of such qualified newspaper for the ensuing fiscal year, beginning on the first day of July, one thousand nine hundred eighty-four. The publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing fiscal year shall file an affidavit as aforesaid on or before the first day of November of each succeeding year, and such affidavit shall control the rate circulation classification of such newspaper, if it is a qualified newspaper, for the ensuing fiscal years. Any qualified newspaper, for which the required affidavit is not filed on or before the first day of March of any calendar year after the year one thousand nine hundred eighty-three, shall be conclusively presumed to have for the ensuing fiscal year a bona fide circulation of less than one thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the
73 secretary of state, as aforesaid, such publisher or proprie-
74 tor shall notify the clerk of the county commission and
75 the board of education of the county in which such quali-
76 fied newspaper is published of the circulation classifica-
77 tion of such qualified newspaper and of the applicable
78 rate for publishing legal advertisements in such qualified
79 newspaper during the ensuing fiscal year. If the qualified
80 newspaper is published in a municipality, the publisher
81 or proprietor shall at the same time also furnish the same
82 notification to the clerk or recorder of such municipality.

CHAPTER 127

(S. B. 678—By Mr. Chafin, Mr. Huffman, Mr. Ash, Mr. Rogers, Mr. Sacco,
Mr. Tomblin, Mr. Chernenko, Mrs. Spears, Mr. Loehr, Mr. Holliday, Mr. Colombo,
Mr. White, Mr. Boettner, Mr. Heck and Mr. Holmes)

(Passed March 12, 1983; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appearance of members of Legislature and designated employees in court, administrative or tribunal hearings during sessions, committee meetings or caucuses; and setting aside sentences, judgments, orders and decrees entered contrary to provisions.

Be it enacted by the Legislature of West Virginia:

That section seventeen, 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.

§4-1-17. Members not required to attend court ten days before, during or thirty days after sessions, two days before, during or three days after interim committee and party caucus meetings; legislative employees; sentences, judgments, etc., contrary to section.
No member of the Legislature, without his consent, may be required to appear in any action or proceeding in any court of the state of West Virginia and/or any court sitting in said state or in or before any administrative agency of this state or any other state or local governmental tribunal, either as a party, witness or attorney within ten days immediately before, at any time during any session of the Legislature, and within thirty days thereafter, or two days immediately before, at any time during any interim meetings of any committee of the Legislature or party caucus, and within three days thereafter. Five temporary legislative employees may be designated in writing by the speaker of the House of Delegates to the clerk of the House of Delegates and five temporary legislative employees may be designated in writing by the president of the Senate to the clerk of the Senate. No such designee, without his or her consent, may be required to appear in any action or proceeding in any court of the state of West Virginia and/or any court sitting in said state or in or before any administrative agency of this state or any other state or local governmental tribunal either as a party, witness or attorney at any time during any period of designation or session of the Legislature, and within thirty days thereafter.

Any sentence, judgment, order or decree made contrary to the provisions of this section, in any action or proceeding, without the consent of such member of the Legislature or designated employee who is a party or attorney therein, if in a court having regular terms, shall be set aside upon the application by motion of any party to the action or proceedings or by the attorney of such party, if made at the next regular term of such court commencing after the adjournment of such session of the Legislature, and, if in a court not having regular terms or by a magistrate, or by an administrative agency of this state, or any other state or local governmental tribunal, shall be set aside upon such application if made within thirty days next following such adjournment. Such sentences, judgments, orders and decrees shall not be invalid by reason of the provisions hereof until and
unless set aside in the manner and within the time limits herein prescribed.

CHAPTER 128

(5. B. 356—By Mr. Nelson and Mr. Jones)

[Passed March 9, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter sixty-four, relating generally to legislative authorization for the promulgation of certain legislative rules by various executive agencies; authorizing certain agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain agencies to promulgate legislative rules as amended; providing the effective dates for such rules and waiving any technical deficiencies which may have occurred when such rules proceeded through the rule-making process; providing for authorization to the employee suggestion award board to promulgate legislative rules for the purpose of governing the operation of the public employee suggestion program; providing for authorization to the state board of health to promulgate legislative rules for the purpose of regulating waste water treatment works operators, for the purpose of requiring laboratories to report positive or reactive serologic and other tests for syphilis and positive laboratory examinations for neisseria gonorrhea to the state department of health, for the purpose of regulating public water supply operators, for the purpose of regulating sewage systems, for the purpose of setting forth the requirements for licensure of nonprofit corporations for guardianship service, for the purpose of governing methods and standards relating to implied consent for chemical test for intoxication, for the purpose of regulating the approval of laboratories for syphilis serology, for the purpose of regulating nursing home licensure, for the purpose of regulating fees for permits, for the purpose of regulating the certificate of need program, for the purpose of regulating
instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, and for the purpose of establishing a controlled substance therapeutic research program and certification of patients, practitioners and hospital pharmacies; providing for authorization to the air pollution control commission to promulgate legislative rules for the purpose of preventing and controlling particulate air pollution from manufacturing process operations, and for the purpose of setting requirements for preconstruction review, determination of emissions offsets for proposed new or modified stationary sources of air pollutants and bubble concept for intrasource pollutants; providing for authorization to the commissioner of motor vehicles to promulgate legislative rules for the purpose of regulating the denial of driving privileges for medical reasons; providing for authorization to the teachers retirement board to promulgate legislative rules for the purpose of governing the state teachers retirement system; providing for authorization to the West Virginia racing commission to promulgate legislative rules for the purpose of regulating the use of medication in race horses, regulating minimum purses for greyhound races, for the purpose of regulating tip sheet vendors at horse racing tracks, for the purpose of regulating tip sheet vendors at greyhound racing tracks, and for the purpose of regulating simulcast races; providing for authorization to the state water resources board to promulgate legislative rules for the purpose of regulating underground injection control; providing for authorization to the department of labor to promulgate legislative rules for the purpose of regulating the operation of steam boilers, permit fees, annual reports and inspectors; providing for authorization to the department of mines to promulgate legislative rules for the purpose of governing the submission and approval of a comprehensive mine safety program for coal mining operations; providing for authorization to the West Virginia housing development fund to promulgate legislative rules for the purpose of administration of single-family mortgage loans for the West Virginia state board of investments under the state mortgage and industrial development investment pool; providing for authorization
to the commissioner of banking to promulgate legislative rules pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange systems; providing for authorization to the alcohol beverage control commissioner to promulgate legislative rules for the purpose of regulating the transportation of alcoholic beverages, for the purpose of regulating the suitability of kitchen and dining facilities; for the purpose of stating grounds for refusal to license private clubs; and for the purpose of regulating lighting of licensed premises.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 64. LEGISLATIVE RULES.


ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

§64-1-2. Effective date of rules.

§64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in article two of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation.

§64-1-2. Effective date of rules.

1 The effective date of the legislative rules authorized in article two of this chapter shall be governed by the provisions of section thirteen, article three, chapter twenty-nine-a, unless the agency promulgating the rules establishes an effective date which is earlier than that provided by section thirteen, article three, chapter twenty-nine-a, in which case the effective date established by the agency shall control, unless the Legislature in the bill autho-
rizing the rules establishes an effective date for such rules in which case the effective date established by the Legislature shall control.

§64-1-3. Technical deficiencies waived.

1. The Legislature further declares each legislative rule now or hereafter authorized under article two of this chapter to have been validly promulgated notwithstanding any failure to comply with any requirement of chapter twenty-nine-a for the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in article two of this chapter.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-5a(1a)(3). Employee suggestion award board.
§64-2-16(2a)(6). State board of health.
§64-2-16(2d)(5). State board of health.
§64-2-16(2d)(8). State board of health.
§64-2-16(20)(5). Air pollution control commission.
§64-2-17c(5)(8). State board of health.
§64-2-18(7a)(4). Teachers retirement board
§64-2-20(5a)(3). Water resources board.
§64-2-21(3)(7). Department of labor.
§64-2-22(1)(34a). Department of mines.
§64-2-31(18b)(7). West Virginia housing development fund.
§64-2-60(7)(2). Alcohol beverage control commissioner.
§64-2-60(7)(5). Alcohol beverage control commissioner.
§64-2-60(7)(10). Alcohol beverage control commissioner.

§64-2-5a(1a)(3). Employee suggestion award board.
1. The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred eighty-two, relating to the employee suggestion award

(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations) are authorized.

(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modifications presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered. These rules were proposed by the state board of health pursuant to sections seven and nine, article one, chapter sixteen of this code.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories) are authorized. These rules were proposed by the state board of health pursuant to section one, article seven, chapter sixteen and section six-a, article one, chapter forty-eight of this code.

(f) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three,
relating to the state board of health (nursing home licensure) are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word "and" at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): "(h) one (1) member who represents social work services."

These rules were proposed by the state board of health pursuant to section seven, article one, chapter sixteen and section three, article five-c, chapter sixteen of this code.


The rules authorized by the Legislature in section sixteen (1)(7)(d) of this article were also proposed by the state board of health pursuant to section nine, article one, chapter sixteen of this code.

§64-2-16(2a)(6). State board of health.

The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (permit fees), are authorized.

§64-2-16(2d)(5). State board of health.

The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (certificate of need) are authorized. These rules were proposed by the state board of health pursuant to sections five and eight, article two-d, chapter sixteen of this code.

§64-2-16(2d)(8). State board of health.

The rules authorized by the Legislature in section sixteen (2d)(5) of this article were also proposed by the state board of health pursuant to section eight, article two-d, chapter sixteen of this code.


The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred eighty-two, relating to the state board of health (eyes of newborn children), are authorized. These rules were proposed by the
1 The rules authorized by the Legislature in section sixteen
2 (3)(10) of this article were also proposed by the state board
3 of health pursuant to section twelve, article three, chapter
4 sixteen of this code.

1 The legislative rules filed in the state register on the third
2 day of June, one thousand nine hundred eighty-two,
3 relating to the state board of health (controlled substances
4 research program and certification), are authorized.

1 The rules authorized by the Legislature in section sixteen
2 (1)(7)(f) of this article were also proposed by the state board
3 of health pursuant to section three, article five-c, chapter
4 sixteen of this code.

§64-2-16(20)(5). Air pollution control commission.
1 (a) The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the air pollution control commission
4 (series V), are authorized.
5 (b) The legislative rules filed in the state register on the
6 thirteenth day of August, one thousand nine hundred
7 eighty-two, relating to air pollution control commission
8 (series XIX), are authorized.

1 The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor vehicles
4 (denial of driving privileges), are authorized with the
5 amendments set forth below:
6 By inserting the words “licensed in the United States”
7 after the phrase “physician of the applicant’s choice”, on
8 page five, line two, and page seven, line one; and by striking
9 out the words “licensed vision specialist” and inserting in
10 lieu thereof the words “an optometrist or ophthalmologist
These rules were proposed by the commissioner pursuant to section nine, article two, chapter seventeen-a and section six, article three-c, chapter seventeen-b of this code.


The rules authorized by the Legislature in section seventeen-a (2)(9) of this article were also proposed by the commissioner of motor vehicles pursuant to section six, article three-c, chapter seventeen-b of this code.

§64-2-17c(5)(8). State board of health.

The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-two, relating to the state board of health (chemical test for intoxication), are authorized.


The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-two, relating to the teachers retirement board, are authorized with the following amendments:

Section VI, subsection 6, D, (a) (ii), of the rules, is to be amended on line two by striking out the words "(3) thru (7)" and inserting in lieu thereof the words "(3) thru (13)";

Section VII, subsection 7, B, (c) of the rules is to be amended on line three after the word "100", by striking out the word "consecutive", and by redesignating the subsection as subsection "(a)"; and Section X, subsection 10, A, (c), of the rules is to be amended on line one, after the word "physicians," by striking out the words "of member's choice," and inserting in lieu thereof the words "one selected by the Board and one selected by the member, ".


(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred
eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(c) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(d) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(e) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 819), are authorized.

§64-2-20(5a)(3). Water resources board.

The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-three, relating to the state water resources board (underground injection control program), are authorized.

§64-2-21(3)(7). Department of labor.

The legislative rules filed in the state register on the tenth day of May, one thousand nine hundred eighty-two, relating to the department of labor (steam boiler rules) as modified by the legislative rule-making review committee, are authorized.

§64-2-22(1)(34a). Department of mines.

The legislative rules filed in the state register on the thirty-first day of March, one thousand nine hundred eighty-two, relating to the department of mines (mine safety program), are authorized.

§64-2-31(18b)(7). West Virginia housing development fund.

The legislative rules filed in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-two, relating to the West Virginia housing development fund (single-family mortgage loans), are authorized.


The legislative rules filed in the state register on the

1 The legislative rules filed in the state register on the
2 eleventh day of June, one thousand nine hundred eighty-
3 two, relating to the commissioner of banking (com-
4 munication terminals and interchange systems), are authorized.


1 The rules authorized by the Legislature in section sixteen
2 (1)(7)(e) of this article were proposed by the state board of
3 health pursuant to section six-a, article one, chapter forty-
4 eight of this code.


1 The legislative rules filed in the state register on the
2 twenty-fourth day of November, one thousand nine
3 hundred eighty-two, relating to the state board of health
4 (guardianship service), are authorized with the exception of
5 section 9.3 of those rules which may not be promulgated.

§64-2-60(7)(2). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 thirtieth day of December, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control
4 commissioner (transportation of alcoholic beverages),
5 are authorized.

§64-2-60(7)(5). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control
4 commissioner (kitchen and dining facilities), are authorized.
5 These rules were proposed by the alcohol beverage control
6 commissioner pursuant to sections two and ten, article
7 seven, chapter sixty of this code.

§64-2-60(7)(5). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of August, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control com-
4 missioner (refusal to license private clubs), are authorized
5 with the exception of subsection (a) of the rules which shall
6 be promulgated as set forth below in this section as follows:
7 (a) For purposes of this regulation, the commissioner
8 may refuse to grant any license if he has reasonable cause to
believe, as indicated by documented evidence, that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not a person of good moral character or repute;

(2) Has maintained a noisy, loud, disorderly or unsanitary establishment;

(3) Has demonstrated, either by his police record or by his record as former licensee under chapter sixty or chapter eleven, article sixteen of the West Virginia code, a lack of respect for law and order, generally, or for the laws and rules governing the sale and distribution of alcoholic beverages or nonintoxicating beer;

(4) Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of narcotics;

(5) Has misrepresented a material fact in applying to the commissioner for a license.

(b) For purposes of this regulation, the commissioner shall refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not eighteen years of age or older;

(2) Has been convicted of a felony or other crime involving moral turpitude, and, upon such conviction, the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of probation, discharge from parole supervision or expiration of sentence;

(3) Has been convicted of violating the liquor laws of any state or the United States, and, upon such conviction, the applicant shall not be eligible for licensure within five years next preceding successful completion of all conditions of
probation, discharge from parole supervision or expiration of sentence;

(4) Has had any license revoked under the liquor laws of any state or the United States within five years next preceding the filing date of the application;

(5) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

(6) Is a person to whom alcoholic beverages may not be sold under the provisions of chapter sixty of the West Virginia code;

(7) Has been adjudicated an incompetent;

(8) Is an officer or employee of the alcohol beverage control commissioner of West Virginia; or

(9) Is violating or allowing the violation of any provision of chapter sixty, chapter sixty-one or chapter eleven, article sixteen of the code in its establishment at the time its application for a license is pending.

These rules were proposed by the alcohol beverage control commissioner pursuant to sections five and ten, article seven, chapter sixty of this code.

§64-2-60(7)(10). Alcohol beverage control commissioner.

(a) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (lighting of licensed premises), are authorized.

(b) The rules authorized by the Legislature in section sixty (7) (2) of this article were also proposed by the alcohol beverage control commissioner pursuant to section ten, article seven, chapter sixty of this code.

(c) The rules authorized by the Legislature in section sixty (7)(5) of this article were also proposed by the alcohol beverage commissioner pursuant to section five, article seven, chapter sixty of this code.
AN ACT to amend and reenact section thirty-six, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the discharge of mechanic's lien by depositing the amount in dispute in escrow; and the disbursement of the escrow.

Be it enacted by the Legislature of West Virginia:

That section thirty-six, article two, 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 2. MECHANICS' LIENS.

§38-2-36. Discharge or release of lien; recordation; escrow; disbursement of escrow.

(a) When a debt secured by any lien mentioned in this article is fully paid at any time after the lien creditor shall have filed his notice of such lien in the office of the clerk of the county commission, such creditor assignee shall cause the clerk to enter a discharge of such lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(b) At any time after a lien creditor has given notice of lien as required by the provisions of this article and has subsequently duly filed such notice of lien with the clerk of the county commission as provided for in this article, the owner or any person against whom the lien is claimed may apply to the circuit court having jurisdiction to enforce such lien, by petition, for an order authorizing such owner or other person against whom the lien is claimed to deposit, in escrow, with the clerk of the circuit court, an amount equal to the sum set out as due in the notice of lien, and directing the circuit clerk to execute a release of the lien. Previous to the filing of such peti-
tion, the petitioner shall cause to be served upon the lien credi-
tor a notice of the time and place that such application will be
made, which notice shall be served by registered mail, return
receipt requested, addressed to the lien creditor or his autho-
rized agent at the address set forth in the notice of lien: Pro-
vided, That if no such address is set forth in the notice of lien,
the petitioner shall serve the notice, setting forth the time and
place that his application will be made, in the same manner as
original process is served for the commencement of civil ac-
tions.

(2) At the hearing upon the petition, the court shall ascer-
tain what interest, if any, might reasonably be expected to
accrue on the sum claimed to be due, either by contract or by
operation of law, and subsequently be payable to the lien
creditor, should he prevail upon his claim. The court shall also
determine the current rate of return upon investments made by
the general receiver of the court at the time of the hearing,
and ascertain what rate of interest might reasonably be earned
upon the petitioner's escrow deposit when paid into the court.
To the extent that the anticipated interest due to the lien
creditor exceeds the anticipated return upon the investment of
the escrow deposit, the court may require an additional de-
posit beyond the sum set forth in the notice of lien, as the
interests of the parties may require. The order authorizing the
deposit and directing the execution of the release shall, if the
court anticipates that complex or extended litigation may arise
in resolving the issue of the validity of liens or claims in the
case, require that the petitioner or other parties give security
before the court, or the clerk thereof, for payment of the costs
which may be awarded in the court, and of the fees due, or to
become due, in any action to determine such issue.

(3) If an escrow deposit is authorized by the court, such
deposit shall be made by cash, and when paid into court, shall
be received by the general receiver of the court, who shall take
charge of and invest the money deposited in the manner pro-
vided for in section one, article six, chapter fifty-one of this
code until otherwise ordered to pay out or dispose of the same
by the circuit court. Upon presentation to the clerk of the
county commission wherein the notice of lien is filed of an
order of the court and a receipt executed by the clerk of the circuit court for the amount required to be deposited by the terms of the order, the clerk of the county commission shall file the order and shall enter a discharge of the lien in the margin of the book in which such account is entered and immediately opposite thereto, or shall execute a release thereof, which shall be recorded in the book in which such notice is entered and noted on the margin of such notice.

(4) Unless an action to determine the validity of the creditor's claim is commenced within six months after the creditor shall have filed his notice of lien in the office of the clerk of the county commission as provided for in this article, the court shall, upon motion of the depositor, order the general receiver to pay out to the depositor the sum deposited, together with any dividends and interest, if any, earned upon the investment of the deposit, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of section seven, article six, chapter fifty-one of this code. If the claim is satisfied or settled and compromised at any time while secured by the deposit made with the general receiver but before an action is commenced, the court shall, upon proof of satisfaction or settlement and compromise, order the general receiver to pay out the deposit to the depositor in the same manner as though suit was not commenced within the requisite period of six months as described above. If an action is commenced, the general receiver shall thereafter pay out the money deposited and the dividends and interest, if any, earned upon the investment of the deposit, as the court may order or decree, less any compensation for the services of the general receiver as the court may direct in accordance with the provisions of said section seven.

CHAPTER 130
(H. B. 1113—By Mr. Steptoe)
[Passed February 25, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-
Be it enacted by the Legislature of West Virginia:

That section one, article two, 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 2. JURISDICTION AND AUTHORITY.

*§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts or justices of the peace, magistrate courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest and cost, is not more than two thousand dollars. Magistrate courts shall have jurisdiction of matters involving unlawful entry or detainer of real estate so long as the title to such real estate is not in dispute. Except as the same may be in conflict with the provisions of this chapter, the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts shall not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks and magistrate assistants shall have the authority to

*Clerk's Note: This section was also amended by S. B. 300, which passed subsequent to this act.*
27 administer any oath or affirmation, to take any affidavit or
28 deposition, unless otherwise expressly provided by law, and
29 to take, under such regulations as are prescribed by law, the
30 acknowledgment of deeds and other writings.

CHAPTER 131
(H. B. 1537—By Mr. Hatcher and Mr. Martin)

[Passed March 12, 1983; 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, relating to magistrates generally; limiting the amount of bond or recognizance required in certain misdemeanor cases in magistrate courts.

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 to read as follows:

ARTICLE 2. JURISDICTION AND AUTHORITY.


1 In addition to jurisdiction granted elsewhere to magistrate
2 courts or a justice of the peace, magistrate courts shall have
3 jurisdiction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on warrants
5 charging felonies committed within the county. A magistrate
6 shall have the authority to issue arrest warrants in all criminal
7 matters, to issue warrants for search and seizure and, except
8 in cases involving capital offenses, to set and admit to bail:
9 Provided, That in cases punishable only by fine such bail or
10 recognizance shall not exceed the maximum amount of the fine
11 and applicable court costs permitted or authorized by statute
12 to be imposed in the event of conviction.
AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; definition of Type B physician assistants and approved programs; certification of Type A and B physician assistants; temporary certification.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Type A physician assistant" means an assistant to a primary care physician who is a graduate of an approved program of instruction in primary health care, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of the primary care physician;

8 (2) "Type B physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in a recognized nonprimary care clinical specialty or is a graduate of an approved program of instruction in primary health care and has either received
additional post-graduate training in a recognized nonprimary care clinical specialty or has received additional training from a physician adequate to qualify him to perform patient services in that specialty as defined by the supervising physician;

(3) "Supervising physician" means a doctor of medicine or podiatry permanently licensed in this state who assumes legal and supervisory responsibility for the work or training of any physician assistant under his supervision;

(4) "Approved program" means an educational program for physician assistants approved and accredited by the committee on allied health education and accreditation on behalf of the American Medical Association; and

(5) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.

(b) The board shall promulgate rules and regulations governing the extent to which physician assistants may function in this state. Such regulations shall provide that the physician assistant is limited to the performance of those services for which he is trained and that he performs only under the supervision and control of a physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his direction, but a separate place of work for the physician assistant shall not be established. In promulgating such rules and regulations, the board shall allow the physician assistant to perform those procedures and examinations submitted to it in the job description required by subsection (g) of this section. The board shall compile and publish an annual report that includes a list of currently certified physician assistants and their employers and location in the state; a list of approved programs; the number of graduates of such approved programs each year and the number of physician assistants from other states practicing in this state.
(c) The board shall certify as a Type A physician assistant any person who files an application and furnishes satisfactory evidence to it that he has met the following standards:

1. He is a graduate of an approved program of instruction in primary health care;
2. He has passed the examination for a primary care physician assistant administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants; and
3. He is of good moral character.

(d) The board may certify as a Type B physician assistant any person who files an application and furnishes satisfactory evidence to it that he has met the following standards:

1. He is of good moral character;
2. He is a graduate of an approved program of instruction in a recognized nonprimary care clinical specialty or is a graduate of an approved program of instruction in primary health care and has either received additional post-graduate training in a recognized nonprimary care clinical specialty or has received additional training from a physician adequate to qualify him to perform patient services in that specialty as defined by the supervising physician; or
3. He has been previously certified by the board as a Type B physician assistant prior to the first day of July, one thousand nine hundred eighty-three.

Certification of an assistant to a physician practicing the specialty of ophthalmology is not permitted or required under this section.

(e) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with subsection (i) of this section, for a Type A physician assistant certificate, the board shall issue to such applicant a temporary certificate allowing such applicant to function as a Type A physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. A Type A physician assistant who
93 has not been certified as such by the National Board of
94 Medical Examiners on behalf of the National Commission
95 on Certification of Physician Assistants will be restricted to
96 work under the direct supervision of the supervising
97 physician.

98 (f) When any person who meets the qualifications for a Type
99 B physician assistant as defined in this section and who
100 submits an application accompanied by a job description
101 for a Type B physician assistant certificate, the board may
102 certify such applicant as a Type B physician assistant for a
103 period of four months. Upon expiration of the four-month
104 temporary certification, the board may certify the
105 applicant as a Type B physician assistant. The Type B
106 physician assistant will be restricted to work under the
107 direct supervision of the supervising physician until he has
108 passed either the examination for surgical assistants or the
109 examination for primary care physician assistants
110 administered by the National Board of Medical Examiners
111 on behalf of the National Commission on Certification of
112 Physician Assistants.

113 (g) Certification of a Type B physician assistant is
114 subject to review and recertification after every three-year
115 period following the first certification. Recertification
116 requires a report from the supervising physician of a Type B
117 physician assistant which must include a performance
118 evaluation, a summary of experience or continuing medical
119 education and any proposed change in job description.

120 (h) The board may certify as a physician assistant in this
121 state without examination any person who has been
122 certified or licensed by examination in another state of the
123 United States which has requirements substantially
124 equivalent to the requirements of this section.

125 (i) Any physician applying to the board to supervise
126 either a Type A or Type B physician assistant shall provide a
127 job description that sets forth the range of medical services
128 to be provided by such assistant. Before a physician
129 assistant can be employed or otherwise use his skills, the
130 supervising physician must obtain approval of the job
131 description from the board. The board may revoke or
132 suspend any certification of an assistant to a physician for
cause, after giving such person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

(j) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his supervision. He shall notify the board in writing of any termination of his supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant, under his direction and supervision, aids in the care and treatment of a patient in a health care facility. A health care facility is not legally responsible for the actions or omissions of the physician assistant unless the physician assistant is an employee of the facility.

(k) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him and specifies his type of classification and the name of his supervising physician. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon certification of the physician assistant and shall specify the type of classification.

(l) A supervising physician shall not supervise at any one time more than two physician assistants.

A physician assistant shall not sign any prescription. He shall not perform any service that his supervising physician is not qualified to perform. He shall not perform any service that is not included in his job description and approved by the board as provided for in this section.

The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(m) Each job description submitted by a licensed supervising physician shall be accompanied by a fee of fifty dollars. A fee of five dollars shall be charged for the annual renewal of the certificate.
(n) It is unlawful for any person who is not certified by the board as a physician assistant to use the title of "physician assistant" or to represent to any other person that he is a physician assistant. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

(o) It is unlawful for any physician assistant to represent to any person that he is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

CHAPTER 133

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

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-four, twenty-five, twenty-six, forty and forty-two, article six, 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 forty-three, relating to revising the West Virginia surface coal mining and reclamation act; pertaining to definitions; filing notices of violation with permit applications; bonds; compliance with federal environmental protection laws; decreasing the civil penalty for violations to seven hundred fifty dollars per day per violation; assessment of civil penalties; appeals; review of permits; designation of areas unsuitable for surface mining; prohibiting conflicts of interest by members of the reclamation commission; validity of regulations; consolidating authority to issue permits, promulgate and enforce rules in article five-a, as they relate to surface mining in the director of the department of natural resources; and providing for appeal of orders of the director.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-3. Definitions.
§20-6-10. Permit application requirements and contents.
§20-6-12. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.
§20-6-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.
§20-6-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligation; appeal.
§20-6-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
§20-6-18. Approval, denial, revision and prohibition of permit.
§20-6-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.
§20-6-24. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.
§20-6-25. Appeal from order of board; judicial review; temporary relief.
§20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.
§20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.
§20-6-42. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.
§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.
§20-6-3. Definitions.

1. As used in this article, unless used in a context that clearly requires a different meaning, the term:

   (a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water shall not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which such water is released.

   (b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface-mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit (1) by surface operations or facilities incident to underground mining activities or (2) by underground operations.

   (c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface-mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact.

   (d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

   (e) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the disturbed areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles
eliminated: Provided, That water impoundments may be permitted pursuant to subdivision (8), subsection (b), section thirteen of this article: Provided, however, That minor deviations may be permitted in order to minimize erosion and sedimentation, retain moisture to assist revegetation, or to direct surface runoff.

(f) "Assessment officer" means an employee of the department, other than a surface-mining reclamation supervisor, inspector or inspector-in-training, appointed by the director to issue proposed penalty assessments and to conduct informal conferences to review notices, orders and proposed penalty assessments.

(g) "Breakthrough" means the release of water which has been trapped or impounded, or the release of air into any underground cavity, pocket or area as a result of surface-mining operations.

(h) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurred or otherwise transported from coal processing plants after physical or chemical processing, cleaning or concentrating of coal.

(i) "Department" means the department of natural resources.

(j) "Director" means the director of the department of natural resources, deputy directors, the chief of the division of reclamation, the assistant chiefs of the division of reclamation and all duly authorized surface-mining reclamation supervisors, or inspectors and inspectors-in-training.

(k) "Disturbed area" means an area where vegetation, topsoil or overburden has been removed or placed by surface-mining operations, and reclamation is incomplete.

(l) "Imminent danger to the health or safety of the public" means the existence of such condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such
condition, practice or violation can be abated. A reasonable
expectation of death or serious injury before abatement
exists if a rational person, subjected to the same conditions
or practices giving rise to the peril, would not expose
himself to the danger during the time necessary for the
abatement.

(m) "Minerals" means clay, coal, flagstone, gravel,
limestone, manganese, sand, sandstone, shale, iron ore and
any other metal or metallurgical ore.

(n) "Operation" means those activities conducted by an
operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or who
should obtain a permit to engage in any activity covered by
this article.

(p) "Permit" means a permit to conduct surface-mining
operations pursuant to this article.

(q) "Permit area" means the area of land indicated on
the approved proposal map submitted by the operator as
part of his application showing the location of perimeter
markers and monuments and shall be readily identifiable
by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued
under this article.

(s) "Person" means any individual, partnership, firm,
society, association, trust, corporation, other business
entity or any agency, unit or instrumentality of federal,
state or local government.

(t) "Prime farmland" has the same meaning as that
prescribed by the United States secretary of agriculture on
the basis of such factors as moisture availability,
temperature regime, chemical balance, permeability,
surface layer composition, susceptibility to flooding and
erosion characteristics, and which historically have been
used for intensive agricultural purposes and as published in
the Federal Register.

(u) "Surface mine," "surface mining" or "surface-
mining operations" means:

(1) Activities conducted on the surface of lands for the
removal of coal, or, subject to the requirements of section
fourteen of this article, surface operations and surface
impacts incident to an underground coal mine, including
the drainage and discharge therefrom. Such activities
include excavation for the purpose of obtaining coal,
including, but not limited to, such common methods as
contour, strip, auger, mountaintop removal, box cut, open
pit and area mining; the uses of explosives and blasting;
reclamation and in situ distillation or retorting, leaching or
other chemical or physical processing; and the cleaning,
concentrating, or other processing or preparation, loading
of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or
where such activities disturb the natural land surface. Such
areas shall also include any adjacent land, the use of which
is incidental to any such activities; all lands affected by the
construction of new roads or the improvement or use of
existing roads to gain access to the site of such activities and
for haulage; and excavations, workings, impoundments,
dams, ventilation shafts, entryways, refuse banks, dumps,
stockpiles, overburden piles, spoil banks, culm banks,
tailings, holes or depressions, repair areas, storage areas,
processing areas, shipping areas and other areas upon
which are sited structures, facilities, or other property or
materials on the surface, resulting from or incident to such
activities: Provided, That such activities do not include the
extraction of coal incidental to the extraction of other
minerals where coal does not exceed sixteen and two-thirds
percent of the tonnage of minerals removed for purposes of
commercial use or sale, or coal prospecting subject to
section eight of this article: Provided, however, That
permanent facilities not within the area being mined and
not directly involved in the excavation, loading, storage or
processing of the coal shall not be subject to the provisions
of this article. Such facilities include, but are not limited to,
offices, garages, bathhouses, parking areas, and
maintenance and supply areas.

(v) "Underground mine" means the surface effects
associated with the shaft, slopes, drifts or inclines
connected with excavations penetrating coal seams or
strata and the equipment connected therewith which
contribute directly or indirectly to the mining, preparation
or handling of coal.
161 (w) “Significant, imminent environmental harm to land, air or water resources” means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term “environmental harm” means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the abatement time set by the director. An environmental harm is significant if that harm is appreciable and not immediately repairable.

§20-6-10. Permit application requirements and contents.

1 (a) The surface-mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface and mineral, to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

3 (2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection;

4 (3) A statement of any current surface-mining permits held by the applicant in the state and the permit number and each pending application;

5 (4) If the applicant is a partnership, corporation, association or other business entity, the following where
applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record ten percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner or principal shareholder previously operated a surface-mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, has ever been an officer, partner, director or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant’s advertisement to be published in a newspaper of general circulation in the locality of the proposed permit area at least once a week for four successive weeks. The advertisement shall contain in abbreviated form the information required by this section including the ownership and map of the tract location and boundaries of the proposed site so that the proposed operation is readily locatable by local residents, the location of the office of the department of natural resources where the application is available for public inspection and stating that written protests will be accepted by the director until a certain date which shall be at least thirty days after the last publication of the applicant’s advertisement;

(7) A description of the type and method of surface-mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed to be used;

(8) The anticipated starting and termination dates of each phase of the surface-mining operation and the number of acres of land to be affected;
A description of the legal documents upon which the applicant bases his legal right to enter and conduct surface-mining operations on the proposed permit area and whether that right is the subject of pending court litigation: Provided, That nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes;

The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until the information is available and is incorporated into the application;

Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface-mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the director, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within one thousand feet of the proposed permit area;
(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the director, showing pertinent elevation and location of test borings or core samplings, where required by the director, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface-mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator’s proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D) chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, That the provisions of this subdivision may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime
farmlands, a soil survey shall be made or obtained according to standards established by the secretary of agriculture in order to confirm the exact location of such prime farmlands;

(16) A reclamation plan as presented in section eleven of this article;

(17) Information pertaining to coal seams, test borings, core samplings or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Other information that may be required by rules and regulations reasonably necessary to effectuate the purposes of this article.

(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and the statement of the result of test borings or core samplings shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the department from funds provided by the United States department of the interior pursuant to Public Law 95-87.

(c) Before the first publication of the applicant's advertisement, each applicant for a surface-mining permit shall file, except for that information pertaining to the coal scam itself, a copy of the application for public inspection in the nearest office of the department of natural resources as specified in the applicant's advertisement.
191 (d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface-mining operation for which the permit is sought, or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

205 (e) Each applicant for a surface-mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

211 (f) The applicant shall file as a part of his permit application a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders or permanent suspension orders resulting from a violation of Public Law 95-87, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface-mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation or permanent suspension.

223 (g) Within five working days of receipt of an application for a permit, the director shall notify the operator in writing, stating whether the application is complete and whether the operator's advertisement may be published. If the application is not complete, the director shall state in writing why the application is incomplete.

§20-6-12. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

1 (a) After a surface-mining permit application has been
approved pursuant to this article, but before a permit has been issued, each operator shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The amount of the bond shall be one thousand dollars for each acre or fraction thereof. The bond shall cover (1) the entire permit area, or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface-mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface-mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, he shall continue bonding in that manner for the term of the permit: Provided, however, That the minimum amount of bond furnished shall be ten thousand dollars.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the performance bond shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners’ 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 department. The cash deposit or market value of such securities or certificates
shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The reclamation commission may approve an alternative bonding system if it will (A) reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time, and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It shall be unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of his obligations to the state for the reclamation of lands disturbed by him.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-six of this article.

(g) All special reclamation taxes deposited by the director with the treasurer or the state of West Virginia to the credit of the special reclamation fund prior to the effective date of this article shall be transferred to the special reclamation fund created by this section and shall be expended pursuant to the provisions of this subsection: Provided, That no taxes transferred into the special reclamation fund created by this section shall be subject to
refund. The fund shall be administered by the director, and he is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface-mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on such land is less than the actual cost of reclamation. The director may also expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter.

Whenever the special reclamation fund established by this subsection sinks below one million dollars at the end of any given quarterly period, every person then conducting coal surface-mining operations shall contribute into said fund a sum equal to one cent per ton of clean coal mined thereafter. This fee shall be collected by the state tax commissioner in the same manner as the West Virginia business and corporation tax in accordance with the provisions of chapter eleven of this code and shall be deposited by him with the treasurer of the state of West Virginia to the credit of the special reclamation fund. At the beginning of each quarter, the director shall advise the state tax commissioner and the governor of the assets, excluding payments, expenditures and liabilities, in the fund. If such assets are below one million dollars, a notice of assessment shall be given to all operators by the state tax commissioner and the one cent per ton assessment shall be collected until the end of the quarter in which the fund's assets, excluding payments, expenditures and liabilities are in excess of two million dollars.


(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 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 the 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 farmlands 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 or federal 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) the 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 the 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 the 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 the 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;
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 postmining 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
297 infrequent service to surface facilities, such as ventilators
298 or monitoring devices, shall be exempt from specific
299 construction criteria provided adequate stabilization to
300 control erosion is achieved through alternative measures;

301 (18) Refrain from the construction of roads or other
302 access ways up a stream bed or drainage channel or in
303 proximity to the channel so as to significantly alter the
304 normal flow of water;

305 (19) Establish on the regraded areas, and all other lands
306 affected, a diverse, effective and permanent vegetative
307 cover of the same seasonal variety native to the area of land
308 to be affected or of a fruit, grape or berry producing variety
309 suitable for human consumption and capable of self-
310 regeneration and plant succession at least equal in extent of
311 cover to the natural vegetation of the area, except that
312 introduced species may be used in the revegetation process
313 where desirable or when necessary to achieve the approved
314 postmining land use plan;

315 (20) Assume the responsibility for successful
316 revegetation, as required by subdivision (19) of this
317 subsection, for a period of not less than five growing
318 seasons, as defined by the director, after the last year of
319 augmented seeding, fertilizing, irrigation or other work in
320 order to assure compliance with subdivision (19) of this
321 subsection: Provided, That when the director issues a
322 written finding approving a long-term agricultural
323 postmining land use as a part of the mining and reclamation
324 plan, the director may grant exception to the provisions of
325 subdivision (19) of this subsection: Provided, however, That
326 when the director approves an agricultural postmining land
327 use, the applicable five growing seasons of responsibility
328 for revegetation shall commence at the date of initial
329 planting for such agricultural postmining land use;

330 (21) Protect off-site areas from slides or damage
331 occurring during surface-mining operations and not
332 deposit spoil material or locate any part of the operations or
333 waste accumulations outside the permit area: Provided,
334 however, That spoil material may be placed outside the
335 permit area, if approved by the director, after a finding that
336 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 a way as 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 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 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 standards; 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 approve 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 qualified registered professional engineer experienced in the design 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 currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, 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 deterioration, and (C) 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.

(c) (1) The reclamation commission may prescribe procedures pursuant to which the director may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (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.

(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 the 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 other
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	hereview 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 the 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 these purposes,
and the 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
ccoal processing waste pile for retarding the flow of or for the
impoundment of water.

§20-6-14. General environmental protection performance
standards for the surface effects of underground
mining; application of other provisions of article
to surface effects of underground mining.

(a) The reclamation commission shall promulgate
separate regulations directed toward the surface effects of
underground coal mining operations, embodying the
requirements in subsection (b) of this section: Provided,
That in adopting such regulations, the reclamation
commission shall consider the distinct difference between
surface coal mines and underground coal mines in West Virginia. Such regulations may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any regulation issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation as minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts or other openings that connect the earth’s surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and regulations promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural
surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f), section thirteen of this article, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in subdivision (20), subsection (b), section thirteen of this article;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and ground water systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting 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 the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or...
enlargement in operations requiring the discharge of water from mines: Provided, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section thirteen of this article for such effects which result from surface-mining operations: Provided, That the reclamation commission shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director after consultation with the department of mines and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns or communities.
(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review and administrative and judicial review shall also be applicable to surface operations and surface impacts incident to an underground mine with such modifications by regulation to the permit application requirements, permit approval or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.

§20-6-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.

(a) Notwithstanding any other provisions of this article, a surface-mining reclamation inspector shall have the authority to issue a cessation order for any portion of a surface-mining operation when an inspector determines that any condition or practice exists, or that any permittee is in violation of any requirements of this article or any permit condition required by this article, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. The cessation order shall take effect immediately. Unless waived in writing, an informal conference shall be held at or near the site relevant to the violation set forth in the cessation order within twenty-four hours after the order becomes effective or such order shall expire. The conference shall be held before a surface-mining reclamation supervisor who shall, immediately upon conclusion of said hearing, determine when and if the operation or portion thereof may resume. Any operator who believes he is aggrieved by the decision of the surface-mining reclamation supervisor may immediately appeal to the director, setting forth reasons why the operation should not be halted. The director forthwith shall determine when the operation or portion thereof may be resumed.

(b) The cessation order shall remain in effect until the director determines that the condition, practice or violation has been abated, or until modified, vacated or released by
the director. Where the director finds that the ordered
cessation of any portion of a surface coal mining operation
will not completely abate the imminent danger to health or
safety of the public or the significant imminent
environmental harm to land, air or water resources, the
director shall, in addition to the cessation order, impose
affirmative obligations on the operator requiring him to
take whatever steps the director deems necessary to abate
the imminent danger or the significant environmental
harm.

(c) Any cessation order issued pursuant to this section
or any other provision of this article may be released by any
inspector. An inspector shall be readily available to
terminate a cessation order upon abatement of the
violation.

§20-6-17. Notice of violation; procedure and actions;
enforcement; permit revocation and bond
forfeiture; civil and criminal penalties; appeals
to the board; prosecution; injunctive relief.

(a) If any of the requirements of this article, rules and
regulations promulgated pursuant thereto or permit
conditions have not been complied with, the director may
cause a notice of violation to be served upon the operator or
his duly authorized agent. A copy of the notice shall be
handed to the operator or his duly authorized agent in
person or served by certified mail addressed to the operator
at the permanent address shown on the application for a
permit. The notice shall specify in what respects the
operator has failed to comply with this article, rules and
regulations or permit conditions and shall specify a
reasonable time for abatement of the violation not to exceed
fifteen days. If the operator has not abated the violation
within the time specified in the notice, or any reasonable
extension thereof, not to exceed seventy-five days, the
director shall order the cessation of the operation or the
portion thereof causing the violation, unless the operator
affirmatively demonstrates that compliance is unattainable
due to conditions totally beyond the control of the operator.
If a violation is not abated within the time specified or any
extension thereof, or any cessation order is issued, a
mandatory civil penalty of not less than seven hundred fifty
dollars per day per violation shall be assessed. Provided,
That if a cessation order is released or expires within
twenty-four hours after issuance no mandatory civil
penalty shall be assessed. A cessation order shall remain in
effect until the director determines that the violation has
been abated or until modified, vacated or terminated by the
director or by a court. In any cessation order issued under
this subsection the director shall determine the steps
necessary to abate the violation in the most expeditious
manner possible and shall include the necessary measures
in the order.

(b) If the director determines that a pattern of violations
of any requirement of this article or any permit condition
exists or has existed, as a result of the operator's lack of
reasonable care and diligence, or that the violations are
willfully caused by the operator, the director shall
immediately issue an order directing the operator to show
cause why the permit should not be suspended or revoked
and giving the operator thirty days in which to request a
public hearing. If a hearing is requested, the director shall
inform all interested parties of the time and place of the
hearing. Any hearing under this section shall be recorded
and subject to the provisions of chapter twenty-nine-a of
this code. Within sixty days following the public hearing,
the director shall issue and furnish to the permittee and all
other parties to the hearing a written decision, and the
reasons therefor, concerning suspension or revocation of
the permit. Upon the operator's failure to show cause why
the permit should not be suspended or revoked, the director
shall immediately revoke the operator's permit, forfeit the
operator's bond, or other security posted pursuant to
section twelve of this article, and give notice to the attorney
general, who shall collect the forfeiture without delay:
Provided, That the entire proceeds of such forfeiture shall
be deposited with the treasurer of the state of West Virginia
to the credit of the special reclamation fund. All forfeitures
collected prior to the effective date of this article shall be
deposited in the special reclamation fund and shall be
expended back upon the areas for which the bond was
posted: Provided, however, That any excess therefrom shall
remain in the special reclamation fund.
(c) Any person engaged in surface-mining operations who violates any permit condition or who violates any other provision of this article or rules and regulations promulgated pursuant thereto may also be assessed a civil penalty. The penalty shall not exceed five thousand dollars. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface-mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the reclamation board of review may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the reclamation board of review may be requested within thirty days. When an informal conference is requested, the operator shall have fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board. (A) When an informal conference is held, the assessment officer shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment. (B) When a formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the director for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Following the hearing the board shall
affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid.

(2) Civil penalties owed under this section may be recovered by the director in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section twelve of this article. If, through the administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(3) Any person having an interest which is or may be adversely affected by any order of the director or the board may file an appeal only in accordance with the provisions of section twenty-five of this article within thirty days after receipt of the order.

(4) The filing of an appeal provided for in this section shall not stay execution of the order appealed from. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests relief from an order for cessation of surface-mining and reclamation operations, the decision on the request shall be issued within forty-eight hours of its receipt. The director may grant such relief, under such conditions as he may prescribe if:

(A) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
(B) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits in the final determination of the proceedings;

(C) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(D) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article or regulations promulgated pursuant thereto, or fails or refuses to comply with any order issued under said article and regulations or any order incorporated in a final decision issued by the director, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(f) Whenever a corporate operator violates a condition of a permit issued pursuant to this article, regulations promulgated pursuant thereto, or any order incorporated in a final decision issued by the director, any director, officer or agent of the corporation, who willfully and knowingly authorized, ordered or carried out the failure or refusal, shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (c) and (e) of this section.

(g) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, petition, record, report, plan or other document filed or required to be maintained pursuant to this article or regulations promulgated pursuant thereto, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(h) Whenever any person: (A) Violates or fails or refuses to comply with any order or decision issued by the director
under this article; or (B) interferes with, hinders or delays
the director in carrying out the provisions of this article; or
(C) refuses to admit the director to the mine; or (D) refuses
to permit inspection of the mine by the director; or (E)
refuses to furnish any reasonable information or report
requested by the director in furtherance of the provisions of
this article; or (F) refuses to permit access to, and copying
of, such records as the director determines necessary in
carrying out the provisions of this article; or (G) violates
dishonesty of any provision of this article, the regulations
promulgated pursuant thereto, or the terms and conditions
of any permit, the director, the attorney general or the
prosecuting attorney of the county in which the major
portion of the permit area is located may institute a civil
action for relief, including a permanent or temporary
injunction, restraining order or any other appropriate
order, in the circuit court of Kanawha County or any court
of competent jurisdiction to compel compliance with and
enjoin such violations, failures or refusals. The court or the
judge thereof may issue a preliminary injunction in any case
pending a decision on the merits of any application filed
without requiring the filing of a bond or other equivalent
security.

(i) Any person who shall, except as permitted by law,
willfully resist, prevent, impede or interfere with the
director or any of his agents in the performance of duties
pursuant to this article is guilty of a misdemeanor, and,
upon conviction thereof, shall be punished by a fine of not
more than five thousand dollars or by imprisonment for not
more than one year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.

(a) Upon the receipt of a surface-mining application or
significant revision or renewal thereof, including public
notification and an opportunity for a public hearing, the
director shall grant, require revision of, or deny the
application for a permit within sixty days and notify the
applicant in writing of his decision.

(b) No permit or significant revision of a permit may be
approved unless the applicant affirmatively demonstrates
and the director finds in writing on the basis of the
information set forth in the application or from information
otherwise available which shall be documented in the
approval and made available to the applicant that:

(1) The permit application is accurate and complete and
that all the requirements of this article and regulations
thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as
required by this article can be accomplished under the
reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of
all anticipated mining in the area on the hydrologic
balance, as specified in section ten of this article, has been
made by the director and the proposed operation has been
designed to prevent material damage to the hydrologic
balance outside the permit area;

(4) The area proposed to be mined is not included within
an area designated unsuitable for surface mining pursuant
to section twenty-two of this article or is not within an area
under administrative study by the reclamation commission
for such designation; and

(5) In cases where the private mineral estate has been
severed from the private surface estate, the applicant has
submitted: (A) The written consent of the surface owner to
the extraction of coal by surface mining; or (B) a
conveyance that expressly grants or reserves the right to
extract the coal by surface mining; or (C) if the conveyance
does not expressly grant the right to extract coal by surface
mining, the surface-subsurface legal relationship shall be
determined in accordance with applicable law: Provided,
That nothing in this article shall be construed to authorize
the director to adjudicate property rights disputes.

(c) Where information available to the department
indicates that any surface-mining operation located in the
state of West Virginia, owned or controlled by the
applicant, is currently in violation of this article or other
environmental laws or regulations, the permit shall not be
issued until the applicant submits proof that such violation
has been corrected or is in the process of being corrected to
the satisfaction of the director or the department or agency
which has jurisdiction over the violation, and no permit
may be issued to any applicant after a finding by the
director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area, and the director is satisfied that the petitioner will comply with this article.

(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland, the director may, pursuant to regulations promulgated hereunder, grant a permit to mine on prime farmland if the operator affirmatively demonstrates that he has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and can meet the soil reconstruction standards in subdivision seven, subsection (b), section thirteen of this article. Except for compliance with subsection (b) of this section, the requirements of subdivision (1) of this subsection shall apply to all permits issued after the third day of August, one thousand nine hundred seventy-seven.

(2) Nothing in this subsection shall apply to any permit issued prior to the third day of August, one thousand nine hundred seventy-seven, or to any revisions or renewals
thereof, or to any existing surface-mining operations for which a permit was issued prior to said date.

(e) If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides, or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

§20-6-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.

(a) (1) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued: Provided, That on application for renewal, the burden shall be on the opponents of renewal, unless it is established that and written findings by the director are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for any renewal requested as required pursuant to section twelve of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the reclamation commission has not been provided.
(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, except incidental boundary revisions, the applicant shall apply for a new permit. Incidental boundary revisions shall include, but not be limited to, additional areas of disturbance ancillary to permitted surface effects of underground mining operations, provided that the operator has submitted (A) adequate bond, (B) a map showing the disturbed area and facilities, and (C) a reclamation plan.

(3) Any permit renewal shall be for a term not to exceed the period of time for which the original permit was issued. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(4) Any permit renewal application shall be on forms prescribed by the director and shall contain such information as the director requires pursuant to rule or regulation.

(b) (1) During the term of the permit, the permittee may submit to the director an application for a revision of the permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit shall be subject to all requirements of this article and regulations promulgated pursuant thereto.

(3) Any extension to an area already covered by the permit, except incidental boundary revisions, shall be made by application for another permit.

(c) The director shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by regulations. The director may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee and opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the director.
§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The reclamation commission shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, That such designation shall not prevent prospecting pursuant to section eight of this article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this section, the reclamation commission shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations: (A) Conflict with existing state or local land use plans or programs; (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or (D) affect natural hazard lands in which the operations could substantially endanger life and property. Such lands to include lands subject to frequent flooding and areas of unstable geology.

(3) The reclamation commission shall develop a process which includes: (A) The review of surface-mining lands; (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use
planning decisions concerning surface-mining operations;
and (D) proper notice and opportunities for public
participation, including a public hearing prior to making
any designation or redesignation pursuant to this section.

(4) Determinations of the unsuitability of land for
surface mining, as provided for in this section, shall be
integrated as closely as possible with present and future
land use planning and regulation processes at federal, state
and local levels.

(5) The requirements of this section shall not apply to
lands on which surface-mining operations were being
conducted on the third day of August, one thousand nine
hundred seventy-seven, or under a permit issued pursuant
to this article, or where substantial legal and financial
commitments in the operations were in existence prior to
the fourth day of January, one thousand nine hundred
seventy-seven.

(b) The director, or any person having an interest which
is or may be adversely affected, shall have the right to
petition the reclamation commission to have an area
designated as unsuitable for surface-mining operations or
to have such a designation terminated. The petition shall
contain allegations of fact with supporting evidence which
would tend to establish the allegations. After receipt of the
petition, the reclamation commission shall immediately
begin an administrative study of the area specified in the
petition. Within ten months after receipt of the petition, the
reclamation commission shall hold a public hearing in the
locality of the affected area after appropriate notice and
publication of the date, time and location of the hearing.
After the director or any person having an interest which is
or may be adversely affected has filed a petition and before
the hearing required by this subsection, any person may
intervene by filing allegations of fact with supporting
evidence which would tend to establish the allegations.
Within sixty days after the hearing, the reclamation
commission shall issue and furnish to the petitioner and any
other party to the hearing, a written decision regarding the
petition and the reasons therefor. In the event that all the
petitioners stipulate agreement prior to the requested
hearing and withdraw their request, the hearing need not be
held.

(c) Prior to designating any land areas as unsuitable for
surface-mining operations, the reclamation commission
shall prepare a detailed statement on: (1) The potential coal
resources of the area; (2) the demand for the coal resources;
and (3) the impact of the designation on the environment,
the economy and the supply of coal.

(d) After the third day of August, one thousand nine
dimension: 458.9x626.2
measurements seven–seven, and subject to valid existing rights,
no surface-mining operations, except those which existed
on that date, shall be permitted:

(1) On any lands in this state within the boundaries of
units of the national park system, the national wildlife
refuge systems, the national system of trails, the national
wilderness preservation system, the wild and scenic rivers
system, including study rivers designated under section
five-a of the Wild and Scenic Rivers Act, and national
recreation areas designated by act of Congress;

(2) Which will adversely affect any publicly owned park
or places included in the national register of historic sites,
or national register of natural landmarks unless approved
jointly by the director and the federal, state or local agency
with jurisdiction over the park, the historic site or natural
landmark;

(3) Within one hundred feet of the outside right-of-way
line on any public road, except where mine access roads or
haulage roads join such right-of-way line, and except that
the director may permit the roads to be relocated or the area
affected to lie within one hundred feet of the road if, after
public notice and an opportunity for a public hearing in the
locality, the director makes a written finding that the
interests of the public and the landowners affected thereby
will be protected;

(4) Within three hundred feet from any occupied
dwelling, unless waived by the owner thereof, or within
three hundred feet of any public building, school, church,
community or institutional building, public park, or within
one hundred feet of a cemetery; or
(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, further, that the surface operations and impacts are incident to an underground coal mine.

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§20-6-24. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.

(a) Any person having an interest which is or may be adversely affected by any order of the reclamation commission assessment officer or a decision of the director to grant, deny, modify, renew or significantly revise a permit, or a decision of the director concerning a bond release pursuant to section twenty-six of this article, may appeal that decision to the board, or may intervene in any such pending appeal. The person so appealing to the board shall be known as the appellant, and the commissioner or director shall be known as the appellee. The appellant and appellee are deemed to be parties to the appeal. Any hearing shall be subject to the requirements of chapter twenty-nine-a of this code.

(b) The appeal shall be in writing and shall set forth the action complained of and the specific grounds upon which the appeal is based. Within thirty days after the appellant is notified of the decision of the director or the reclamation commission, or within fifteen days after the appellant is
notified of the decision of the assessment officer, the
appellant or any person with an interest which is or may be
adversely affected may request a hearing on the reasons for
the decision complained of. A notice of the appeal shall be
filed with the reclamation commission or the director
within three days after the appeal is filed with the board.

(c) Upon the filing of the appeal, the board shall fix the
time and place at which the hearing on the appeal will be
held, which hearing shall be held within thirty days after
the notice of appeal is filed, and shall give the appellant, the
commission and the director at least twenty days' written
notice thereof by certified mail. The board may postpone or
continue any hearing upon its own motion or motion of the
parties to the appeal.

(d) Not later than five days prior to the time fixed for the
hearing on the appeal, the reclamation commission or
director shall prepare and certify to the board a complete
record of the proceedings of the reclamation commission or
director out of which the appeal arises, including all
documents and correspondence related to the matter.

(e) The board shall hear the appeal de novo and any
party to the appeal may submit evidence. For the purpose of
conducting a hearing on an appeal, the board may require
the attendance of witnesses and the production of books,
records and papers, and it may, and at the request of any
party it shall, issue subpoenas for witnesses or subpoenas
duces tecum to compel the production of any books, records
or papers, directed to the sheriff of the county where
witnesses, books, records or papers are found, which
subpoenas and subpoenas duces tecum shall be served and
returned in the same manner as subpoenas and subpoenas
duces tecum in civil litigation are served and returned. The
fees and allowances for mileage of sheriffs and witnesses
shall be the same as those permitted in civil litigation in
trial courts. All fees and mileage expenses incurred and the
expense of preparing a copy of the record at the request of
the appellant shall be paid by the appellant. The board may
visit the site of the activity or proposed activity which is the
subject of the hearing and take such additional evidence as
it considers necessary provided that all parties and
intervenors be given notice of the visit and are given an
opportunity to accompany the board.
(f) In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the disobedience, neglect or refusal occurs, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the court of a refusal to testify therein. Witnesses at the hearings shall testify under oath and any member of the board may administer oaths or affirmations to persons who so testify.

(g) A stenographic record of the testimony and other evidence submitted shall be made. The record shall include all of the testimony and other evidence and the rulings on the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering the same may make a proffer thereof, and the proffer shall be made a part of the record of the hearing.

(h) If upon completion of the hearing the board finds that the decision appealed from was lawful and reasonable, it shall make a written order affirming the same, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make a written order reversing or modifying the decision appealed from. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based. On all appeals to the board, the board shall issue a final decision thirty days after the hearing or within thirty days after the testimony presented at the hearing has been transcribed and checked for accuracy. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each party by registered or certified mail. The order of the board shall be final unless vacated upon judicial review thereof.

§20-6-25. Appeal from order of board; judicial review; temporary relief.

(a) Within thirty days after receipt of an order from the
board, any applicant, any person with an interest which is
or may be adversely affected, or the appellee who has
participated in the administrative proceedings before the
board and who is aggrieved by the decision of the board may
obtain judicial review thereof by appealing to the circuit
court of Kanawha County or the county in which the
surface-mining operation is located. Any party desiring to
so appeal shall file with the board a notice of appeal,
designating the order appealed from, stating whether the
appeal is taken on questions of law, questions of fact or
questions of law and fact, and stating specific grounds upon
which the appeal is based. A copy of the notice shall also be
filed by the appellant with the court and shall be mailed or
otherwise delivered to the appellee. The notice and copies
thereof shall be filed and mailed or otherwise delivered
within thirty days after the date upon which the appellant
received notice from the board by certified mail of the
making of the order appealed from. No appeal bond may be
required to make effective an appeal on questions of law,
questions of fact or questions of law and fact.

(b) The filing of a notice of appeal shall not, unless
specifically ordered by the court, operate as a stay of the
order of the board. The court may, under such conditions as
it may prescribe, grant such temporary relief as it deems
appropriate pending final determination of the proceedings
if:

(1) All parties to the proceedings have been notified and
given an opportunity to be heard on a request for temporary
relief;

(2) The person requesting relief shows that there is a
substantial likelihood that he will prevail on the merits of
the final determination of the proceedings; and

(3) The relief will not adversely affect the public health
or safety or cause significant imminent environmental
harm to land, air or water resources.

(c) Within thirty days after receipt of the notice of
appeal, the board shall prepare and file in the court the
complete record of the proceedings out of which the appeal
arises, including a transcript of the testimony and other
evidence which was submitted before the board. The
expense of preparing a copy of the record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

(d) Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the case or set out in the briefs of the appellant. Errors not argued by brief may be disregarded. The court shall hear the appeal solely upon the record made before the board.

(e) The court may affirm, vacate, modify, set aside or remand any order of the board for further action as the court may direct. Any order shall be affirmed if the court concludes that the order is supported by substantial evidence based on the record as a whole. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon the court to hear and entertain the appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

(f) The availability of the review shall not be construed to limit the operation of the rights established in section twenty-eight of this article except as provided therein.

(g) Whenever an order is issued under this section, or as a result of any administrative or judicial proceeding under this article, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the board or the court to have been reasonably incurred by such person for or in connection with his participation in the proceedings, may be assessed against either party by the board or the court.

§20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

(a) The permittee may file a request with the director for
the release of a performance bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisements shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee's intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution and the estimated cost of abating such pollution. The director shall notify the permittee in writing of his decision to release or not to release all or part of the performance bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the director's decision shall be issued within thirty days thereafter.

(c) If the director is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he may release said bond or deposit, in whole or in part, according to the following schedule:
(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;

(2) Two years after the last augmented seeding, fertilizing, irrigation or other work to insure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

(3) When the operator has completed successfully all surface-mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.

No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen or fourteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section ten of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.
(d) If the director disapproves the application for
release of the bond or portion thereof, the director shall
notify the permittee, in writing, stating the reasons for
disapproval and recommending corrective actions
necessary to secure said release and notifying the operator
of his right to a hearing.

(e) When any application for total or partial bond
release is filed with the director, he shall notify the
municipality in which a surface-mining operation is
located by registered or certified mail at least thirty days
prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may
be adversely affected by release of the bond or the
responsible officer or head of any federal, state or local
governmental agency which has jurisdiction by law or
special expertise with respect to any environmental, social
or economic impact involved in the operation, or is
authorized to develop and enforce environmental standards
with respect to such operations, has the right to file written
objections to the proposed bond release and request a
hearing with the director within thirty days after the last
publication of the permittee's advertisement. If written
objections are filed and a hearing requested, the director
shall inform all of the interested parties of the time and
place of the hearing and shall hold a public hearing in the
locality of the surface-mining operation proposed for bond
release within three weeks after the close of the public
comment period. The date, time and location of such public
hearing shall also be advertised by the director in a
newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the
applicant, or the responsibilities of the director pursuant to
this section, the director may hold an informal conference
to resolve any written objections and satisfy the hearing
requirements of this section thereby.

(h) For the purpose of such hearing, the director has the
authority and is hereby empowered to administer oaths,
subpoena witnesses and written or printed materials,
compel the attendance of witnesses, or production of
materials, and take evidence including, but not limited to,
ispections of the land affected and other surface-mining
126 operations carried on by the applicant in the general
127 vicinity. A verbatim record of each public hearing required
128 by this section shall be made and a transcript made
129 available on the motion of any party or by order of the
130 director at the cost of the person requesting the transcript.

§20-6-40. Conflict of interest prohibited; criminal penalties
therefor; employee protection.

1 (a) No employee of the department or employee of the
2 reclamation board of review performing any function or
duty under this article or any members of the reclamation
commission shall have a direct or indirect financial interest
in any surface-mining operation. Whoever knowingly
violates the provisions of this subsection is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not more than two thousand five hundred dollars, or
imprisoned in the county jail not more than one year, or
both fined and imprisoned. The director shall establish
methods by which the provisions of this subsection will be
monitored and enforced, including appropriate provisions
for the filing and the review of statements and supplements
thereto concerning any financial interest which may be
affected by this subsection.

(b) No person shall discharge or in any other way
discriminate against, or cause to be fired or discriminated
against, any employee or any authorized representative of
employees by reason of the fact that the employee or
representative has filed, instituted, or caused to be filed or
instituted, any proceeding under this article, or has testified
or is about to testify in any proceeding resulting from the
administration or enforcement of the provisions of this
article.

(c) Any employee or a representative of employees who
has reason to believe that he has been fired or otherwise
discriminated against by any person in violation of
subsection (b) of this section may, within thirty days after
the alleged violation occurs, petition to the reclamation
board of review for a review of the firing or discrimination.
The employee or representative shall be known as the
petitioner and shall serve a copy of the petition upon the
person or operator who will be the respondent. The
participants shall be given ten days' written notice of the
hearing before the board and the hearing shall be held within thirty days of the filing of the petition. The board shall have the same powers and shall hear the petition in the same manner as provided in subsections (e) and (f), section twenty-four of this article.

(d) If the board finds that the alleged violation did occur, it shall issue an order incorporating therein findings of fact and conclusions requiring the participant committing the violation to take such affirmative action to abate the violation by appropriate action, including, but not limited to, the hiring or reinstatement of the employee or representative to his former position with compensation. If the board finds no violation, it shall issue a finding to that effect. Orders issued by the board under this section shall be subject to judicial review in the same manner as other orders of the board issued under this article.

(e) Whenever an order is issued under this section to abate any violation, at the request of the petitioner a sum equal to the aggregate costs and expenses, including attorneys' fees to have been reasonably incurred by the petitioner for, or in connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.

§20-6-42. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.

(a) All rules and regulations promulgated under section 502(c) of the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), pursuant to the provisions of chapter sixty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, and chapter seventy-one, acts of the Legislature, regular session, one thousand nine hundred seventy-nine, shall remain in full force and effect until the expiration of eight months after approval of the West Virginia state program under section 503 of Public Law 95-87 upon proclamation of the governor that the approval has been granted: Provided, That those persons conducting operations under a permit or underground opening approval issued in accordance with said section 502(c), and in compliance therewith, shall be subject to said regulations
until the administrative decision pertaining to the granting or denying of a permit under this article has been made by the director.

(b) Permits granted under this article shall be subject to rules and regulations promulgated hereunder.

§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

(a) Notwithstanding any provisions of this chapter to the contrary, all powers, duties and responsibilities of the chief of the division of water resources under article five-a of this chapter with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a, are hereby transferred to the director. The director shall have sole authority to issue, amend, transfer, renew or revoke all permits required under article five-a of this chapter with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a. The procedures for issuance, amendment, transferral, renewal and revocation of such permits shall be governed by the provisions of this article. The director shall consolidate the various permit programs under articles five-a and six of this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. All provisions of article five-a heretofore applicable to coal mines, preparation plants and all refuse and waste therefrom shall be continued under this section.

(b) Notwithstanding any provisions of this chapter to the contrary, the reclamation commission shall have sole authority to promulgate rules and regulations necessary or proper to implement the provisions of article five-a of this chapter with respect to all coal mines, preparation plants and all refuse and waste therefrom, except that the water resources board shall have the sole authority pursuant to section three-a, article five-a of this chapter to promulgate rules and regulations setting standards of water quality applicable to the waters of the state. To the extent feasible, the reclamation commission shall promulgate rules and regulations consolidating the various regulatory programs under this chapter applicable to all
coal mines, preparation plants and all refuse and waste therefrom. The promulgation of such rules and regulations shall be governed by the provisions of this article.

(c) Notwithstanding any provisions of this chapter to the contrary, the director shall have the sole authority to enforce and shall enforce the rules and regulations of the reclamation commission and the rules and regulations of the water resources board setting water quality standards for the waters of the state as they apply to all coal mines, preparation plants and all refuse and waste therefrom. The enforcement of such rules and regulations shall be governed by the provisions of this article.

(d) Notwithstanding any provisions of this chapter to the contrary, any order of the director issued pursuant to subsection (a) of this section, under article five-a of this chapter, or for the purposes of implementing the "National Pollutant Discharge Elimination System" established under the Federal Clean Water Act, shall be appealable only to the state water resources board and such appeal shall be governed by the provisions of section fifteen, article five-a of this chapter.

(e) This section shall become effective upon a proclamation by the governor stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System established under the Federal Clean Water Act contemplated by this section has been given by the Administrator of the United States Environmental Protection Agency.

CHAPTER 134
(§ 8. 27—By Mrs. Spears)

[Passed February 16, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reclamation commission of the department of natural resources,
generally; and providing for the continuation and reestablishment of the commission.

Be it enacted by the Legislature of West Virginia:

That section seven, 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. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.

1 (a) There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division, and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and appoint one or more assistant attorneys general, to serve at the will and pleasure of the attorney general, and such assistant or assistants, shall be paid out of any funds made available for that purpose by the Legislature or by Public Law 95-87 to the department of natural resources.

20 (b) The commission shall have authority to:

21 (1) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article: Provided, That the commission shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: Provided, however, That any forms, handbooks or similar materials having the effect of a rule or regulation as defined in article three, chapter twenty-nine-a of this code, or issued, developed or distributed by the director
pursuant to or as a result of a rule or regulation, shall be subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this article;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules and regulations adopted by the commission; and for the purpose of any investigation or hearing hereunder, the commission, any member, or any appointee thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(4) Enforce, through the director, the provisions of this article as provided herein; and

(5) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public.

(c) (1) After the commission has adopted the regulations required by this article, any person may petition the commission to initiate a proceeding for the issuance, amendment or repeal of a rule under this article.

(2) Such petitions shall be filed in the office of the commission and shall set forth the facts which support the issuance, amendment or repeal of a rule under this article.

(3) The commission may hold a public hearing or may conduct such investigation or proceeding as the commission deems appropriate in order to determine whether or not such petition should be granted.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the commission shall either grant or deny the petition. If the commission grants the petition, the commission shall promptly commence an appropriate proceeding in
accordance with the provisions of chapter twenty-nine-a of this code. If the commission denies such petition, the commission shall so notify the petitioner in writing setting forth the reasons for such denial.

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 reclamation commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the reclamation commission shall continue to exist until the first day of July, one thousand nine hundred eighty-nine.

CHAPTER 135

(H. B. 1974—By Mrs. Neal and Mr. Hutchinson)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to the West Virginia surface coal mining and reclamation act; and pilot program for the growing of grapes on reclaimed areas.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-13a. Pilot program for the growing of grapes on reclaimed areas.

1 In furtherance of the purposes set forth in subdivision twenty, section thirteen of this article, the director is hereby
authorized and directed to establish and maintain a pilot program to determine the best procedures for propagating the growth of grapevines and bushes on reclaimed surface-mined areas. Such program shall investigate and implement selections of the best variety of grapes for reclamation purposes based upon environmental considerations and soil quality, the most desirable methods of planting and tending grapes and any other related matters deemed desirable by the director. The cost of such program shall be paid from funds regularly appropriated to the department.

CHAPTER 136
(H. B. 1290—By Mr. Moore)

[Passed March 8, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the department of mines board of appeals; providing for increased compensation for board members per meeting; and increasing amount of expense reimbursement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-31. Board of appeals.

There is hereby created a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who shall be chairman of the board and who must not have
had any connection at any time with the coal industry or
an organization representing miners, shall be selected by the
two members appointed by the governor. The term of office
of members of the board shall be five years.

The function and duties of the board shall be to hear
appeals, make determinations on questions of miners' entitle-
ments due to withdrawal orders and appeals from discharge or
discrimination, and suspension of certification certificates.

The chairman of the board shall have the power to adminis-
ter oaths and subpoena witnesses and require production of
any books, papers, records or other documents relevant or
material to the appeal inquiry.

Each member of the board shall receive one hundred dollars
per diem while actually engaged in the performance of the
work of the board. Each member shall be reimbursed for all
reasonable and necessary expenses actually incurred during
the performance of their duties. Each member shall receive
mileage expense reimbursement at the rate established by
rule and regulation of the commissioner of the department of
finance and administration for in-state travel of public em-
ployees. No reimbursement for expenses shall be made except
upon an itemized account, properly certified by such members
of the board. All reimbursement for expenses shall be paid
out of the state treasury upon a requisition upon the state
auditor.

Board members, before performing any duty, shall take
and subscribe to the oath required by article IV, section five of
the constitution of West Virginia.

CHAPTER 137
(H. B. 1941—By Mr. Moore and Mr. Casey)

[Passed March 8, 1983; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter twenty-two of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section four-a, relating to the appointment of the chairman of the board of miner training, education and certification by the executive when the board cannot agree upon a selection; and the boards authority to select the chairman upon subsequent vacancies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22-6A-4a. Failure to elect chairman; appointment.

1 Whenever a vacancy in the office of chairman of the board shall exist for more than sixty days, then the power of the six persons appointed to the board by the governor to select and agree upon the chairman shall be suspended. Upon such suspension, the chairman shall be appointed by the governor, with the advice and consent of the Senate, to serve for the unexpired term of the chairman. The governor shall select as chairman a person who is neither an employee of the department of mines, a coal operator, employee of a coal operator or a miner and shall ascertain to his satisfaction that the person to be appointed can preside impartially as chairman of the board and has such experience in the design and operation of educational programs in fields other than mining as will, in the opinion of the governor, qualify the person to serve on the board notwithstanding his lack of past or present involvement in the mining industry.

After the governor has exercised the power of appointment conferred by this section and the person appointed qualifies and serves as chairman and a vacancy in the office of chairman thereafter occurs, then the suspension of the power of the other six members to select and agree upon a chairman shall cease and such power shall vest in and remain with such other members until and unless again suspended under this section because of the failure to timely exercise such power.
CHAPTER 138

(Com. Sub. for H. B. 1402—By Mr. Chambers and Mr. Steptoe)

[Passed March 12, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; to amend and reenact section sixteen of said article fifteen; to amend article two, chapter fifteen of said code by adding thereto two new sections, designated sections forty and forty-one; to amend and reenact section five, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter seventeen-b; to amend and reenact sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code; to further amend said article five by adding thereto a new section, designated section eleven; to amend and reenact sections one and two, article five-a of said chapter seventeen-c; to further amend said article five-a by adding thereto a new section, designated section two-a; to amend and reenact sections three and four of said article five-a; and to further amend said chapter seventeen-c by adding thereto a new article, designated article five-b, all of said code, relating to driving under the influence of alcohol, controlled substances or drugs generally; denying consumers sales tax exemption on liquors and wines for resales by private clubs; making the purchase of liquors or wines for resale subject to such tax; prescribing the form for tax returns for consumers sales tax and the mode of payment; requiring the payment of consumers sales tax collected from licensed private clubs to be paid into a drunk driving prevention fund within the state treasury; creating a commission on drunk driving prevention, prescribing the membership thereof and the terms of office; providing for meetings and quorum; describing the powers and duties of the commission on drunk driving prevention; authorizing said commission to promulgate rules; setting forth monitoring and reporting functions of the commission; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; providing penalties for driving while license suspended
or revoked; providing additional penalties for driving while license revoked for driving under influence of alcohol, controlled substances or drugs or for driving while having an alcoholic concentration of ten hundredths of one percent, or more, by weight, or for refusing a designated secondary chemical test; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor; defining the phrase "in this state" and making certain terms or phrases synonymous; 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; 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; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting persons arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; requiring municipal ordinances to contain the same elements as offenses under article five, chapter seventeen-c or otherwise making them null and void; requiring municipal ordinances to prescribe the same penalties as are prescribed for offenses under article five, chapter seventeen-c containing the same elements; providing for implied consent to administrative procedures dealing with revocation of licenses; allowing revocation of license; authorizing legislative rules to set conditions for contesting secondary chemical test in administrative hearing; requiring commissioner to promulgate certain procedural rules; 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 revocation of judicial review of the same; authorizing assessment of cost against party requesting hearing; creation of special account for costs assessed at hearing; 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 statements or mail reports within time periods prescribed; requiring postmortem tests for alcohol in persons killed in motor vehicle accidents; providing time limit to conduct test and who may conduct test; granting civil and criminal immunity to person conducting test; providing fee for conducting test; relating to whom and how county medical examiners report results of blood test; limiting the admissibility of the results of test as evidence; and providing that the reports of the tests are only for statistical and highways safety purposes.

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

That article fifteen, 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 nine-a; that section sixteen of said article fifteen be amended and reenacted; that article two, chapter fifteen of said code be amended by adding thereto two new sections, designated sections forty and forty-one; that section five, article three, chapter seventeen-b of said code be amended and reenacted; that section three, article four of said chapter seventeen-b be amended and reenacted; that sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section eleven; that sections one and two, article five-a of said chapter seventeen-c be amended and reenacted; that said article five-a be further amended by adding thereto a new section, designated section two-a; that sections three and four of said article five-a be amended and reenacted; and that said chapter seventeen-c be further amended by adding thereto a new article, designated article five-b, all to read as follows:

**Chapter**

11. Taxation.

15. Public Safety.

17B. Motor Vehicle Operator's and Chauffeur's Licenses.

17C. Traffic Regulations and Laws of the Road.

**CHAPTER 11. TAXATION.**

**ARTICLE 15. CONSUMERS SALES TAX.**

§11-15-9a. Exemption; exception for resale of liquors and wines.

§11-15-9a. Exemptions; exception for resale of liquors and wines.

The exemptions provided in this article for 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 the tax under this article and, for sales of tangible personal property for the purpose of resale in the form of tangible personal property, shall not apply to persons or organizations licensed under authority of article seven, chapter sixty of this code, for the purchase of liquor or wines from the alcohol beverage control commissioner for resale.


The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return: Provided, That notwithstanding the provisions of section thirty of this article, any such tax collected by the alcohol beverage control commissioner from persons or organizations licensed under authority of article seven, chapter sixty of this code shall be paid into a revolving fund account in the state treasury, designated the drunk driving prevention fund, to be administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

A monthly return shall be signed by the taxpayer or his duly authorized agent.
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

§15-2-41. Powers and duties of commission; rule-making authority; monitoring and reporting.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

There is hereby created within the department of public safety the commission on drunk driving prevention which shall consist of seven members as follows: The superintendent of the department of public safety; the commissioner of the department of motor vehicles; the alcohol beverage control commissioner; a prosecuting attorney appointed by the governor from a list of three prosecuting attorneys submitted by the prosecuting attorney's association; a county sheriff appointed by the governor from a list of three county sheriffs submitted by the county sheriff's association; a municipal police officer appointed by the governor from a list of three officers submitted by the state fraternal order of police; a lay citizen of the state appointed by the governor, who has demonstrated an interest in the prevention of drunk driving.

The superintendent of the department of public safety shall be the chairman, ex officio, of the commission and shall provide the necessary staff and meeting facilities to the commission. The appointed members shall serve for a term of two years and may be reappointed. Any appointed member who ceases to occupy the position which qualifies him for the appointment shall immediately vacate his membership on the commission. Each member shall serve until the appointment of his successor.

No member shall receive any compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

A majority of the members of the commission shall constitute a quorum for the transaction of business. Meetings shall
§15-2-41. Powers and duties of commission; rule-making authority; monitoring and reporting.

The commission shall have the following powers and duties:

(a) Develop and maintain a comprehensive program to prevent drunk driving and to enhance the enforcement of laws defining drunk driving offenses.

(b) Inquire and determine from state and local law-enforcement agencies the availability and need for equipment and additional personnel for the effective enforcement of laws defining drunk driving offenses.

(c) Subject to appropriations of the Legislature, administer the drunk driving prevention fund created by the provisions of section sixteen, article fifteen, chapter eleven of this code by providing grants to state and local law-enforcement agencies for the purchase of equipment or hiring of additional personnel for the effective enforcement of laws defining drunk driving offenses and such other items as the commission may define by legislative rule to be reasonable and necessary.

(d) Promulgate rules to guide and administer said fund and to establish procedures and criteria for grants to state and local law-enforcement agencies under this section, in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(e) Monitor, review and evaluate the expenditure, use and effectiveness of the fund and report to the Legislature annually on the exercise of its powers and duties under this section, including an annual accounting of expenditures and of the grants made under this section.

CHAPTER 17B. MOTOR VEHICLE OPERATOR’S AND CHAUFFEUR’S LICENSES.

Article
3. Cancellation, Suspension or Revocation of Licenses.
ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§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:

2 (1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

3 (2) Any felony in the commission of which a motor vehicle is used;

4 (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;

5 (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;

6 (5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;

7 (6) Driving under the influence of alcohol, controlled substances or other drugs outside the state of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code; and

8 (7) 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.
ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§ 17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol content.

(a) Except as otherwise provided in subsection (b) of this section any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully suspended or revoked shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than forty-eight hours nor more than six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than
five hundred dollars; for the second offense, such person
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be punished by imprisonment in the county
jail for a period of not less than six months nor more than
one year and, in addition to such mandatory jail sentence,
shall be fined not less than one thousand dollars nor more
than three thousand dollars; for the third or any subsequent
offense, such person shall be guilty of a felony, and, upon con-
viction thereof, shall be imprisoned in the penitentiary for not
less than one year nor more than three years and, in addition
to such mandatory jail sentence, shall be fined not less than
three thousand dollars nor more than five thousand dollars.

(c) The department upon receiving a record of the con-
viction of any person under this section upon a charge of
driving a vehicle while the license of such person was law-
fully revoked shall extend the period of such suspension for an
additional like period and if the conviction was upon a charge
of driving while a license was revoked lawfully the department
shall not issue a new license for an additional period of one year
from and after the date such person would otherwise have been
entitled to apply for a new license.

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.

5B. Postmortem Tests for Alcohol in Persons Killed in Motor Vehicle
Accidents.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or
drugs; penalties.

§17C-5-2a. Definition of phrase "in this state": phrases synonymous with driv-
ing under the influence of alcohol: validation of warrants and
indictments.

§17C-5-4. Implied consent to test; administration at direction of law-en-
forcement 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-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested incapable of refusal; hearings.

§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-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

  1 (a) Any person who:

  2 (1) Drives a vehicle in this state while he is:

  3 (A) Under the influence of alcohol, or

  4 (B) Under the influence of any controlled substance, or

  5 (C) Under the influence of any other drug, or

  6 (D) Under the combined influence of alcohol and any controlled substance or any other drug, and

  7 (2) 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, and

  8 (3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death,

  9 (4) Shall 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 and shall be fined not less than one thousand dollars nor more than three thousand dollars.

  20 (b) Any person who:

  21 (1) Drives a vehicle in this state while he is:

  22 (A) Under the influence of alcohol, or

  23 (B) Under the influence of any controlled substance, or
(C) Under the influence of any other drug, or

(D) Under the combined influence of alcohol and any controlled substance or any other drug, and

(2) 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,

(3) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he is:

(A) Under the influence of alcohol, or

(B) Under the influence of any controlled substance, or

(C) Under the influence of any other drug, or

(D) Under the combined influence of alcohol and any controlled substance or any other drug, and

(2) 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 bodily injury to any person other than himself,

(3) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he is:

(A) Under the influence of alcohol, or
(B) Under the influence of any controlled substance, or
(C) Under the influence of any other drug, or
(D) Under the combined influence of alcohol and any controlled substance or any other drug,

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his vehicle to be driven in this state by any other person who is:

(A) Under the influence of alcohol, or
(B) Under the influence of any controlled substance, or
(C) Under the influence of any other drug, or
(D) Under the combined influence of alcohol and any controlled substance or any other drug,

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned 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 who:

(1) Knowingly permits his vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof.
(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned 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.

(h) Any person violating any provision of subsection (b), (c), (d), (e), (f) or (g) 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, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(i) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) 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, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(j) For purposes of subsections (h) and (i) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one;

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United
States or of any other state of an offense which has the same elements as an offense described in this section, which offense occurred after the effective date of this section.

(k) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) 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), (e), (f) or (g) of this section.

(1) For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter sixty-a of this code.

(m) The sentences provided herein upon conviction for a violation of this article are mandatory and shall not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less.

(n) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three, shall not in any way add to or subtract from the elements of the offenses set forth herein and earlier defined in the prior enactment of this section.

§17C-5-2a. Definition of phrase "in this state"; phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

(a) For purposes of this article and article five-a of this chapter, the phrase "in this state" shall mean anywhere within the physical boundaries of this state, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel.

(b) When used in this code, the terms or phrases "driving under the influence of intoxicating liquor," "driving or operat-
ing 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.

(c) From and after the effective date of this section a war-
rant or indictment which charges or alleges an offense, pro-
hibited 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 (b) 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.

Any person who drives a motor vehicle in 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 ad-
ministered in accordance with the provisions of section five of
this article whenever a law-enforcement officer has reasonable
cause to believe a person to have committed an offense pro-
hibited by section two of this article or by an ordinance of a
municipality of this state which has the same elements as an
offense described in said 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 committed an offense prohibited by section
two of this article or by an ordinance of a municipality of this
state which has the same elements as an offense described in
said section two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall desig-
nate which one of the aforesaid secondary tests shall be ad-
ministered: 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 to 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 revocation 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 given a written statement advising him that his refusal to submit to the secondary chemical test finally designated as provided in this section, will result in the revocation of his license to operate a motor vehicle in this state for a period of at least one year and up to life.

For the purpose of this article the term “law-enforcement officer” or “police 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 police department in any municipality as defined in section two, article one, chapter eight of this code. If any municipality 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 or any municipal law-enforcement officer of another municipality within the county wherein the arrest is made 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 law-enforcement officer has reason to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said
section two of this article, the law-enforcement 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 law-enforcement 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-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the test shall not be given: Provided, That prior to such refusal, the person is given a written statement advising him that his refusal to submit to the secondary test finally designated will result in the revocation of his license to operate a motor vehicle in this state for a period of at least one year and up to life. The officer shall within forty-eight hours of such refusal, sign and submit to the commissioner of motor vehicles a written statement of the officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the secondary chemical test finally designated in the manner provided in section four of this article, and (4) such person was given a written statement advising him that his license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if he refused to submit to the
secondary chemical test finally designated in the manner pro-
vided in section four of this article. The signing of the state-
ment required to be signed by this section shall constitute an
oath or affirmation by the person signing such statement that
the statements contained therein are true and that any copy filed
is a true copy. Such statement shall contain upon its face a
warning to the officer signing that to willfully sign a statement
containing false information concerning any matter or thing,
material, or not material, is false swearing and is a misdemean-
or. Upon receiving the statement the commissioner shall make
and enter an order revoking such person's license to operate a
motor vehicle in this state for the period prescribed by this sec-
tion.

For the first refusal to submit to the designated secondary
chemical test, the commissioner shall make and enter an order
revoking such person's license to operate a motor vehicle in
this state for a period of one year. If the commissioner has
previously revoked the person's license under the provisions of
this section, the commissioner shall, for the refusal to submit to
the designated secondary chemical test, make and enter an
order revoking such person's license to operate a motor vehicle
in this state for a period of ten years: Provided, That the license
may be reissued in five years in accordance with the provisions
of section three, article five-a of this chapter. If the commis-
sioner has previously revoked the person's license more than
once under the provisions of this section, the commissioner
shall, for the refusal to submit to the designated secondary
chemical test, make and enter an order revoking such person's
license to operate a motor vehicle in this state for a period of
life: Provided, That the license may be reissued in ten years in
accordance with the provisions of section three, article five-a
of this chapter. A copy of each such order shall be forwarded
to such person by registered or certified mail, return receipt re-
quested, and shall contain the reasons for the revocation and
shall specify the revocation period imposed pursuant to this sec-
tion. No such revocation shall become effective until ten days
after receipt of the copy of such order. Any person who is un-
conscious or who is otherwise in a condition rendering him in-
capable of refusal, shall be deemed not to have withdrawn his
consent for a test of his blood, breath or urine as provided in
section four of this article and the test may be administered al-
though such person is not informed that his failure to submit to
the test will result in the revocation of his license to operate a
motor vehicle in this state for the period provided for in this
section.

A revocation 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 inci-
dent 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) For the purposes of this section, where reference is made
to previous suspensions or revocations under this section, the
following types of suspensions or revocations shall also be re-
garded as suspensions or revocations under this section:

(1) Any suspension or revocation on the basis of a con-
viction under a municipal ordinance of another state or a
statute of the United States or of any other state of an offense
which has the same elements as an offense described in section
two of this article, for conduct which occurred on or after the
effective date of this section;

(2) Any revocation under the provisions of section one or
two, article five-a of this chapter, for conduct which occurred
on or after the effective date of this section.

(c) A person whose license to operate a motor vehicle in
this state has been revoked shall be afforded an opportunity
to be heard, in accordance with the provisions of section two,
article five-a of this chapter.

§17C-5-8. Interpretation and use of chemical test.

Upon trial for the offense of driving a motor vehicle in this
state while under the influence of alcohol, controlled sub-
stances or drugs, or upon the trial of any civil or criminal
action arising out of acts alleged to have been committed by
any person driving a motor vehicle while under the in-
fluence 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 alcohol;

(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 alcohol;

(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 alcohol.

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 in this state while under the influence of alcohol, controlled substances or drugs 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 analysis disclosed by such chemical test shall be made available to such arrested person forthwith upon demand.

§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 section two of this article, 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.

§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

(a) Notwithstanding the provisions of section five, article twelve, chapter eight of this code, on and after the first day of September, one thousand nine hundred eighty-three, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving
under the influence of intoxicating liquor or otherwise pro-
hibiting conduct made unlawful by this article shall be null and
void and of no effect unless such ordinance defines such an
offense in substantially similar terms as an offense defined
under the provisions of this article and such offense contains
the same elements as an offense defined herein.

(b) Notwithstanding the provisions of section one, article
eleven, chapter eight of this code, on and after the first day
of August, one thousand nine hundred eighty-three, each and
every municipal ordinance defining a misdemeanor offense of or
relating to driving under the influence of alcohol or driving
under the influence of intoxicating liquor or otherwise pro-
hibiting conduct made unlawful by this article shall prescribe
the same penalty for such offense as is prescribed for an
offense under this article containing the same elements.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL, CON-
TROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for
driving under the influence of alcohol, controlled substances
or refusal to submit to secondary chemical test.

§17C-5A-2. Hearings; revocation; review.

§17C-5A-2a. Assessment of costs; special account created.

§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; revoca-
tion for driving under the influence of alcohol, con-
trolled substances or drugs; refusal to submit to
secondary chemical test.

(a) Any person who is licensed to operate a motor vehicle in
this state and who drives a motor vehicle in this state shall be
deemed to have given his consent by the operation thereof, sub-
ject to the provisions of this article, to the procedure set forth in
this article for the determination of whether his license to oper-
ate a motor vehicle in this state should be revoked because he
did drive a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or combined influence of al-
cohol or controlled substances or drugs, or did drive a motor
vehicle while having an alcoholic concentration in his blood of

(b) Any law-enforcement officer arresting a person for an
offense described in section two, article five of this chapter or
for an offense described in a municipal ordinance which has
the same elements as an offense described in said section two
of article five, shall report to the commissioner of the depart-
ment of motor vehicles by written statement within forty-eight
hours the name and address of the person so arrested. Such re-
port shall include the specific offense with which the person is
charged, and, if applicable, a copy of the results of any secon-
dary chemical test of blood, breath or urine. The signing of the
statement required to be signed by this subsection shall consti-
tute an oath or affirmation by the person signing such state-
ment that the statements contained therein are true and that
any copy filed is a true copy. Such statement shall contain up-
on its face a warning to the officer signing that to willfully
sign a statement containing false information concerning any
matter or thing, material or not material, is false swearing and
is a misdemeanor.

(c) If, upon examination of the written statement of the
officer and the test 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 or for an offense described in a municipal
ordinance which has the same elements as an offense described
in said section two of article five, 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 or more, by weight, or at the
time the person was arrested he was under the influence of
alcohol, controlled substances or drugs, the commissioner shall
make and enter an order revoking 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, and shall contain the reasons
for the revocation and the revocation periods provided for in
§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, 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 revocation. 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: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county.

(b) 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. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on his own motion or for the benefit of any law-enforcement officer or any person requesting such hearing, and such policies shall be enforced and applied to all parties equally. 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: Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at such hearing without the necessity of payment of fees by the department of motor vehicles. 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 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) Law-enforcement officers shall be compensated for the
time expended in their travel and appearance before the
commissioner by the law-enforcement agency by whom they
are employed at their regular rate if they are scheduled to be on
duty during said time or at their regular overtime rate if they
are scheduled to be off-duty during said time.

(d) The principal question at such hearing shall be whether
the person did drive a motor vehicle while under the influence
of alcohol, controlled substances or drugs, or did drive a motor
vehicle while having an alcohol concentration in his blood of
ten hundredths of one percent or more, by weight, or did refuse
to submit to the designated secondary chemical test.

The commissioner may propose a legislative rule in compli-
ance with the provisions of article three, chapter twenty-nine-a
of this code, which rule may provide that if a person accused
of driving a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or accused of driving a motor
vehicle while having an alcohol concentration in his blood of
ten hundredths of one percent or more, by weight, intends to
challenge the results of any secondary chemical test of blood,
breath or urine, or intends to cross-examine the individual or
individuals who administered the test or performed the chemi-
cal analysis, he shall, within an appropriate period of time
prior to the hearing, notify the commissioner in writing of
such intention. Such rule may provide that when there is a
failure to comply with the notice requirement, the results of
the secondary test, if any, shall be admissible as though the
person and the commissioner had stipulated the admissibility
of such evidence. Any such rule shall provide that the rule
shall not be invoked in the case of a person who is not repre-
sented by counsel unless the communication from the commis-
sioner to the person establishing a time and place for hearing
also informed the person of the consequences of his failure to
timely notify the commissioner of his intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent 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, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, (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, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(f) If, in addition to a finding that the person 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 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 or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(g) If, in addition to a finding that the person 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 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 or revoked the person’s license under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(h) If, in addition to a finding that the person 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 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 or revoked the person’s license under the provisions of this section or section one of this article, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person’s license more than once under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(i) If the commissioner finds by a preponderance of the evidence that the person 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 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, controlled substances or
drugs, or knowingly permitted his vehicle to be driven by
a person who had an alcoholic concentration in his blood of
ten hundredths of one percent or more, by weight, the com-
missioner shall revoke the person's license for a period of
six months: Provided, That if the commissioner has pre-
viously suspended or revoked the person's license under the
provisions of this section or section one of this article, the
period of revocation shall be ten years: Provided, however,
That if the commissioner has previously suspended or revoked
the person's license more than once under the provisions of
this section or section one of this article, the period of revoca-
tion shall be for the life of such person.

(j) For purposes of this section, where reference is made
to previous suspensions or revocations under this section, the
following types of criminal convictions or administrative sus-
pensions or revocations shall also be regarded as suspensions or
revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions
of the prior enactment of this section for conduct which
occurred on or after the first day of September, one thousand
nine hundred eighty-one, and prior to the effective date of
this section;

(2) Any conviction under the provisions of a prior enact-
ment of section two, article five of this chapter for conduct
which occurred within a period of five years immediately pre-
ceding the first day of September, one thousand nine hundred
eighty-one;

(3) Any suspension or revocation on the basis of a convic-
tion under a municipal ordinance of another state or a statute
of the United States or of any other state of an offense which
has the same elements as an offense described in section two,
article five of this chapter, for conduct which occurred on or
after the effective date of this section;

(4) Any suspension or revocation on the basis of a convic-
tion under a statute of the United States or of any other state
of an offense which has the same elements as an offense
described in section two, article five of this chapter, or a prior
enactment of said section, for conduct which occurred within
a period of five years immediately preceding the first day of
September, one thousand nine hundred eighty-one;

(5) Any revocation under the provisions of section seven,
article five of this chapter, for conduct which occurred on
or after the effective date of this section.

(k) In the case of a hearing wherein a person is accused
of refusing to submit to a designated secondary test, the
commissioner shall make specific findings as to (1) whether
the arresting law-enforcement officer had reasonable grounds
to believe such person had been driving a motor vehicle
in this state while under the influence of alcohol, controlled
substances or drugs, (2) whether such person was lawfully
placed under arrest for an offense relating to driving a motor
vehicle in this state while under the influence of alcohol, con-
trolled substances or drugs, (3) whether such person refused
to submit to the secondary test finally designated in the man-
ner provided in section four of this article, and (4) whether
such person had been given a written statement advising
him that his license to operate a motor vehicle in this state
would be revoked for at least one year and up to
life if he refused to submit to the test finally designated
in the manner provided in section four, article five of this
chapter.

(l) If the commissioner finds by a preponderance of the
evidence that (1) the arresting law-enforcement officer had
reasonable grounds to believe such person had been driving
a motor vehicle in this state while under the influence of
alcohol, controlled substances or drugs, (2) such person was
lawfully placed under arrest for an offense relating to driving
a motor vehicle in this state while under the influence of
alcohol, controlled substances or drugs, (3) such person re-
fused to submit to the secondary chemical test finally desig-
nated, and (4) such person had been given a written statement
advising him that his license to operate a motor vehicle in this
state would be revoked for a period of at least one year and up
to life if he refused to submit to the test finally designated,
the commissioner shall revoke the person's license to operate
a motor vehicle in this state for the periods specified in section seven, article five of this chapter.

(m) If the commissioner finds to the contrary with respect to the above issues, he shall rescind his earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section, or section seven, article five of this chapter.

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 revocation 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 revocation 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 the appellant will suffer irreparable harm if such order is not stayed.

§17C-5A-2a. Assessment of costs; special account created.

The department of motor vehicles is hereby authorized and required to assess witness costs at the same rate as witness fees in circuit court and a docket fee of ten dollars for each hearing request against any person filing a request for a hearing under section two of this article who fails to appear, fails to have said order rescinded or fails to have said order modified to a lesser period of revocation.

All fees and costs collected hereunder shall be paid into a special revenue account in the state treasury. The funds in said account shall be used to pay or reimburse the various law-enforcement agencies at the same rate as witnesses in circuit court for the travel and appearance of its officers before the commissioner or authorized deputy or agent pursuant to a hearing request under the provisions of this article.
The department shall authorize payment to the law-enforce-
ment agencies from said account as the fees for a particular
hearing request are received from the person against whom
the costs were assessed. The department shall authorize trans-
fer to an appropriate agency account from the special account to
pay costs of registered and certified mailings and other ex-
penses associated with the conduct of hearings under this
article as the docket fee for a particular hearing request is
received from the person against whom the costs were assessed.

In the event judicial review results in said order being
rescinded or modified to a lesser period of revocation the
costs assessed shall be discharged.

§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 whose license has
been revoked under the provisions of this article, or section
seven, article five of this chapter, or subsection (6), section
three, article five, chapter seventeen-b of this code, and shall
likewise establish the minimum qualifications for persons con-
ducting the safety and treatment program. 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, de-
fensive 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 whose license has been
revoked under the provisions of this article or section seven.
article five of this chapter, or subsection (6), section five,
article three, chapter seventeen-b of this code, which shall con-
tain the following: (A) A listing and evaluation of the of-
fender’s prior traffic record; (B) characteristics and history of
alcohol or drug use, if any; (C) his amenability to rehabilita-
tion 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 revoked under this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, 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 ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(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 revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(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 revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(c) Notwithstanding any provisions of this section to the contrary, when the necessary terms and conditions for the successful completion of the safety and treatment program for the reissuance of the person's license to operate a motor vehicle includes or requires full-time commitment to a treatment facility for a period of one day or more, the person shall be forthwith entitled to judicial review, pursuant to chapter twenty-nine-a of this code, of the requirement of and necessity for full-time commitment to a treatment facility as a condition for successful completion of the person's safety and treatment program.

§17C-5A-4. Search for record of prior offenses by driver.

The commissioner shall immediately upon receipt of the statements 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 statements 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 statement an abstract showing any such prior offense, the date thereof, the identity of any court in which any proceedings in regard thereto were instituted and the disposition thereof.

Any law-enforcement officer who fails to file the statements required by this chapter within forty-eight hours of the arrest of any person charged for any violation of section two, article five of this chapter or for any offense described in a municipal ordinance which has the same elements as an offense described in said section two, 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 law-enforcement officer of any such offense.
as required by this section, within a period of forty-eight hours
after the receipt of the statement, 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.

ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS
KILLED IN MOTOR VEHICLE ACCIDENTS.

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians killed in
motor vehicle accidents; time limit for conducting test; who
may conduct test; express consent to withdraw blood from dead
body granted; granting civil and criminal immunity to person
conducting test; fee for test.

§17C-5B-2. To whom and how county medical examiners report results of
blood tests; such report not admissible as evidence; use of
reports only for statistical and highway safety purposes.

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians
killed in motor vehicle accidents; time limit for con­
ducting test; who may conduct test; express consent
to withdraw blood from dead body granted; granting
civil and criminal immunity to person conducting
test; fee for test.

When any motor vehicle driver or adult pedestrian dies in a
motor vehicle accident in this state or dies within four hours
after having been involved in a motor vehicle accident in this
state, the physician in attendance, or law-enforcement officer
having knowledge of such death, or the funeral director, or any
other person present when such death occurred, shall immed­
ately report such death to the medical examiner of the county
in which such death occurred. Upon receipt of such notice, the
medical examiner shall take charge of the dead body and shall
conduct, or shall cause to be conducted, within twelve hours
after receiving such notice and before the dead body is em­
balmed, a blood test to determine the presence and percentage
concentration of alcohol in the blood of such dead body.

The blood test required under this section shall be conducted
only by a person qualified to conduct an autopsy under article
twelve, chapter sixty-one of this code or by a doctor of medi-
cine, doctor of osteopathy, registered nurse, trained medical
technician at the place of his employment or county coroner
who is deemed qualified by the office of medical examina-
tions to conduct such blood test.
Any person who is to conduct a blood test under the provisions of this section is hereby expressly authorized to withdraw blood from the dead body in the quantity necessary to conduct such blood test. Any person withdrawing blood from the dead body and testing such blood and any hospital or clinic in which such blood is withdrawn and tested under the provisions of this section shall be immune from all civil and criminal liability which might otherwise be imposed.

Any person conducting a blood test under the provisions of this section shall receive a standardized fee in the amount determined by the office of medical examinations, which fee shall be paid from funds appropriated to the office of medical examinations.

Nothing contained in this section shall be construed to preclude the taking of a blood test by any other person having the right to take any such test or cause such test to be taken while the medical examiner has charge of the body.

§17C-5B-2. To whom and how county medical examiners report results of blood tests; such reports not admissible as evidence; use of reports only for statistical and highway safety purposes.

Each county medical examiner shall immediately report the results of each blood test conducted under the authority of section one of this article by him, or conducted at his request, to the chief medical examiner of the office of medical examinations and to the department of public safety. The results of such blood test and report thereof shall be used only for recordkeeping and statistical purposes. No results of such blood test or any report thereof shall be admissible in evidence in any action or proceeding of any kind in any court or before any tribunal, board, agency or person.

The department of public safety shall compile the data from all such reports submitted to it on a monthly basis. The department shall forward such compilations to the governor's highway safety administration and the department of motor vehicles. Such compilations shall be only for statistical purposes and highway safety information and shall not disclose or reveal in any manner the identity of any dead person whose
18 blood was tested under the provisions of section one of this
19 article.
20 The department of public safety, the governor's highway
21 safety administration and department of motor vehicles shall
22 make use of such compilations in a manner to provide accur-
23 ate and useful statistical information to government and the
24 public relative to achieving a reduction in motor vehicle acci-
25 dents arising in whole or in part from the imbibing of alcohol
26 by motor vehicle drivers and adult pedestrians.

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CHAPTER 139
(S. B. 706—By Mr. Holmes)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of title; providing for issuance of title when the applicant has paid the required taxes and fees to a motor vehicle dealership which has filed for bankruptcy; and providing further for the assignment of any claims against the motor vehicle dealership to the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

*§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

1 Certificates of registration of any vehicle or registra-

*Clerk's Note: This section was also amended by H. B. 1300, which passed subsequent to the passage of this act.
tion 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 the 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 the vehicle. The 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 the vehicle, the names and addresses of the holders of the liens and any 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 the vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase shall be considered 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 the 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 considered the value thereof for the purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless the 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 chil-
dren: Provided, however, That the husband or wife, or the
parents or children previously have paid the tax on the
vehicles so transferred to the state of West Virginia:
Provided further, That the department of motor vehicles
may issue a certificate of registration and title to an ap-
plicant if the applicant provides sufficient proof to the
department of motor vehicles that the applicant has paid
the taxes and fees required by this section to a motor
vehicle dealership that has filed bankruptcy proceedings
in the United States bankruptcy court and the taxes and
fees so required to be paid by the applicant have been
impounded due to the bankruptcy proceedings: And
provided further, That the applicant makes an affidavit
of the same and assigns all rights to claims for money
the applicant may have against the motor vehicle dealer-
ship to the department of motor vehicles.

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 com-
merce, 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
subdivision 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, That this state or
any political subdivision thereof, or any 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 the tax shall be paid by the person when the title to the 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.

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the application for motor vehicle certificate of title and the tax upon the privilege of certification; increasing the penalty for the first conviction for false swearing; creating a felony offense for second and subsequent convictions for false swearing; and providing penalties for second and subsequent convictions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be is-

*Clerk's Note: This section was also amended by S. B. 706, which passed prior to this act.
sued or furnished by the department of motor vehicles or any
other officer charged with such duty, unless the applicant there-
for already has received, or shall at the same time make appli-
cation for and be granted, an official certificate of title of such
vehicle. Such application shall be upon a blank form to be fur-
nished 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 informa-
tion as the department of motor vehicles may require. The ap-
lication 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 im-
posed 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 ac-
quired through gift, or by any manner whatsoever, unless spec-
ifically 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 certifi-
cate of title for any vehicle shall be issued to any applicant un-
less such applicant shall have paid to the department of motor
vehicles the tax imposed by this section which shall be five per-
cent 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 hus-
band 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 subdivision 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 on first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned in the county jail for a period not to exceed six months or in the discretion of the court be subject to both such fine and imprisonment; for a second or any subsequent conviction within five years, he shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years or in the discretion of the court be subject to both such fine and imprisonment.

CHAPTER 141
(Com. Sub. for H. B. 1243—By Mr. Speaker, Mr. See)

[Passed February 23, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section
twelve-a, relating to requiring a certificate of title of a motor vehicle to include an odometer disclosure form; requiring completion of the form by the owner and purchaser of a motor vehicle; specifying information to be included on the disclosure form; allowing certain exceptions to completion of the form; and providing a penalty.

_Be it enacted by the Legislature of West Virginia:_

That article three, chapter seventeen-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 twelve-a, to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; Issuance of Certificates of Title.**

§17A-3-12a. Disclosure of odometer information on certificate of title; exception; penalty.

(a) On and after the first day of July, one thousand nine hundred eighty-three, in accordance with provisions of section four hundred eight-a, of the Motor Vehicle Information and Costs Savings Act, Public Law 92-513, the owner and the purchaser of a motor vehicle must complete the odometer disclosure form on the certificate of title before a new certificate of title may be issued for a transfer of ownership of a vehicle. The odometer disclosure form on the certificate of title shall contain the following information:

1. (1) The odometer reading at the time of transfer;
2. (2) Certification by the owner that to the best of his knowledge the odometer reading reflects:
   A. The actual mileage the vehicle has been driven;
   B. The amount of mileage in excess of the designated mechanical odometer limit of ninety-nine thousand, nine hundred ninety-nine miles; or
   C. A difference from the number of miles the vehicle has actually been driven and that the difference is greater than that caused by odometer calibration error, and that the odometer reading is not the actual mileage.
(3) Certification by the owner that while the motor vehicle was in his possession:

(A) Neither he nor any person altered, set back or disconnected the odometer;

(B) The odometer was altered for repair or replacement purposes and that the actual mileage registered on the repaired or replacement odometer was identical to that mileage before such service; or

(C) That the odometer reading is not the actual mileage and that the true mileage is unknown to him.

(b) Notwithstanding the provisions of this section, the form for odometer disclosure on the certificate of title need not be completed for any of the following motor vehicles:

(1) A vehicle having a gross weight of more than sixteen thousand pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is twenty-five years old or older; or

(4) A transfer of a new motor vehicle prior to its first transfer for purposes other than resale.

(c) In addition to the information provided in this section, the odometer disclosure form shall refer to the federal Motor Vehicle Information and Cost Savings Act and this section of the code, and shall state that incorrect information may result in civil liability and civil or criminal penalties.

(d) A transfer of a motor vehicle which has not been previously titled in this state or which has a certificate of title issued prior to the effective date of this section, must include the execution of the transfer by the owner and the purchaser on a written statement signed by each of the two parties, which statement contains substantially the same information as is required in this section and with the provisions of the odometer mileage statement form pursuant to the Motor Vehicle Information and Cost Savings Act.

(e) The commissioner shall promulgate rules and regula-
(f) Any person who violates any of the provisions of this section with intent to defraud shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

CHAPTER 142

(H. B. 1881—By Mr. Ashcraft and Mrs. Burke)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to original and renewal of registration and issuance of certificates of title; increasing the number of characters for use on license plates to six; and reducing the fees for special registration plates from forty dollars to twenty-five dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally.

1 The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

4 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 elected officials thereof, the justices 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 said official or spouse, but not to exceed two plates for each such official, which plate shall bear the initials of the individual, or any combination of letters not to exceed six, 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
generally known, together with a designation of the office and
which plate shall supersede, during that term of office and
while such motor vehicle is owned by said official or spouse,
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 a
registration plate bearing a maximum of six letters or num-
bers. 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 registra-
tion 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 regis-
tration 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 twenty-five
dollars shall be paid to the department in each case in which
an application for a special registration plate is made as pro-
vided in subdivisions (a), (b) and (c):  Provided, 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.
CHAPTER 143
(Com. Sub. for H. B. 1143—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; original and renewal of registration; issuance of certificates of title; providing for the issuance of a maximum of five Class A licenses for use by county sheriffs and municipalities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles.

1. Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, vehicles operated by the department of public safety, not to exceed six vehicles operated by conservation officers of the department of natural resources, and not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal, shall not be operated or driven by any person unless it shall have displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line, and the lettering for the words "State Car" shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

Such vehicle shall also have attached to the rear a plate
bearing a number and such other words and figures as the
commissioner of motor vehicles shall prescribe. The rear plate
shall also be green with the number in white.

On registration plates issued to vehicles owned by counties,
the color shall be white on red with the word "County" on top
of the plate and the words "West Virginia" on the bottom.
On any registration plates issued to a city or municipality, the
color shall be white on blue with the word "City" on top, and
the words "West Virginia" on the bottom. The colors may
not be reversed and shall be of reflectorized material. The com-
missioner is hereby authorized to designate the colors and de-
sign of any other registration plates that are issued without
charge to any other agency in accordance with the motor ve-

cle laws. The registration plates issued to counties, munic-
ipalities and other governmental agencies authorized to receive
colored plates hereunder shall be affixed to both the front and
rear of such vehicles: *Provided,* That upon application and
payment of fees, the commissioner is hereby authorized to
issue a maximum of five Class A license plates per ap-
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No other registration plate shall be issued for, or attached
to, any such state-owned vehicle.

The commissioner of motor vehicles shall have a sufficient
number of both front and rear plates produced to attach to all
state-owned cars. The numbered registration plates for such
vehicles shall start with the number "five hundred" and the
commissioner shall issue consecutive numbers for all state-
owned cars.

It shall be the duty of each office, department, bureau,
commission or institution furnished any such vehicle to have
such plates affixed thereto prior to the operation of such ve-
hicle by any official or employee.

Any person violating the provisions of this section shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than fifty dollars nor more than one hundred
dollars.
AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; transfers of title or interest; salvage certificates for certain wrecked vehicles; fee for salvage certificates; and providing penalty for violation.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, 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 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle. The insurance company or insurer shall within ten days surrender the certificate of title and a copy of the claim settlement to the department of motor vehicles. The department shall issue a "salvage certificate," on a form prescribed by the commissioner, in the name of the insurance company or the insurer. Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and deliver it to the purchaser who shall also apply for a
salvage certificate, even if the insured or claimant owner is the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (b) of this section:

(a) Any owner who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within ten days surrender the certificate of title or salvage certificate to the department for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall, within ten days surrender the certificate to the department. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (b) of this section.

(b) If the motor vehicle is a “reconstructed vehicle” as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an authorized law-enforcement officer or official state inspection station to determine the operating condition and vehicle identification number and all other inspection requirements. Following an approved inspection, an application for a new certificate of title may be submitted to the department; however, the applicant may be required to submit all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the department before a certificate of title may be issued.

(c) The department shall charge a fee of twenty-five dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for a reconstructed vehicle, the department shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner.

(d) A certificate of title issued by the department for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed vehicle.
be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

CHAPTER 145
(H. B. 1029—By Mr. Steptoe)

[Passed March 11, 1983; 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 thirty-six-a, relating to traffic regulations and laws of the road; equipment; sun screening devices; penalties.

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 thirty-six-a, to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-36a. Sun screening devices; penalties.

(a) This section establishes the requirements for approved vehicle glazing materials designed to reduce the effects of the sun and for products and materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(b) No person may operate or drive a passenger car, multi-purpose passenger vehicle, truck or bus with a gross vehicle rating of ten thousand pounds or less unless in compliance with this section. This section applies to all exterior locations of glazing materials within the applicable vehicles except for roof mount locations.

(c) As used in this section:
(1) "Sun screening devices" means products or materials designed to be used in conjunction with approved vehicle safety glazing materials for the purpose of reducing the effects of the sun.

(2) "Luminous reflectance and light transmittance" means that reflectance and transmittance referred to in this section are in the visible light range.

(3) "Reflectance" means the ratio of the amount of total light expressed in percentages, which is reflected outward by the product or material to the amount of total light falling on the product or material.

(4) "Transmittance" means the ratio of the amount of total light expressed in percentages, which is allowed to pass through the product or material including the glazing to the amount of total light falling on the product or material and the glazing.

(5) "Manufacturer" means:

Any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials (person means every natural person, firm, copartnership, association or corporation); or one who fabricates, laminates or tempers the glazing material incorporating the capacity to reflect or to reduce the transmittance of light during the manufacturing process.

(6) "Commissioner" means the commissioner of motor vehicles responsible for promulgating rules and regulations governing vehicle equipment approval or use of motor vehicles over the highways of the state.

(7) "FMVSS" means the federal motor vehicle safety standards of the national highway transportation safety administration.

(8) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

(d) Glazing Location Applicability—(1) No person may
operate any motor vehicle on any public highway, road or street with the front windshield, the side windows to the immediate right and left of the driver, or side wings forward of and to the left and right of the driver that do not meet the requirements of FMVSS 205 in effect at the time of its manufacture or are either covered by or treated with any product or material which would alter the glazing color, increase its reflectivity, or reduce its light transmittance.

Nothing in this regulation prohibits the use of any products or materials along the top edge of the windshield so long as such products or materials are transparent and do not encroach upon the AS-1 portion of the windshield as provided by FMVSS 205 and FMVSS 128.

(2) All windows behind the driver—No person may operate any motor vehicle on any public highway, road or street with any windows behind the driver which do not meet the requirements of FMVSS 205 at the time of manufacture or are either covered by, treated with or composed of any product or material except as specified below:

(A) Film materials, when tested in conjunction with glazing materials, shall have a total reflectance of 35 ± 3% or less and transmittance of at least 8 ± 3% or more.

(B) Perforated sun screening materials, when tested in conjunction with glazing materials, shall have a total reflectance of 35 ± 3% or less and transmittance of no less than 30 ± 3%. For those products or materials having different levels of reflectance, the highest reflectance from the product or material will be measured by dividing the area into sixteen equal sections and averaging the overall reflectance. The measured reflectance of any of those sections shall not exceed fifty percent.

(C) Louvered materials, when installed as designed, may not reduce the area of driver visibility below fifty percent as measured on a horizontal plane. When such materials are used in conjunction with rear window, the measurement shall be made based upon the driver's view from the inside rear view mirror.
(D) Glazing, where the capability to either reflect or reduce the transmittance of light is incorporated within the glazing during the manufacturing process:

(i) Shall have, when tested as a completed unit, a total reflectance of 35 ± 3% or less and transmittance of at least 8 ± 3% or more; and

(ii) Is not required to meet the seventy percent luminous transmittance requirement as specified in Test No. 2 of ANSI Z.26 as referenced in FMVSS 205.

(E) Privacy drapes, curtains or blinds installed on the interior of motor homes.

(F) Right and left outside rearview mirrors are required with the use of any sun screening device or material except when used only on the top edge of the windshield.

e) Certification and Testing—Each manufacturer shall demonstrate compliance with the applicable requirements of this section. Test specimens of the products or materials shall be tested in conjunction with the glazing material of intended use. The necessary tests shall be conducted by or supervised by an approved, certified laboratory or a testing organization.

1. Testing of the products or materials referred to in subsection (d) of this section shall be conducted in accordance with the applicable provisions of the following standards:

(A) Transmittance — American National Standards Institute (ANSI) Z26.1-1977; and


2. Testing of the products or materials referred to in subsection (d) of this section shall be conducted in accordance with the applicable provisions of the following standards:

(A) Transmittance — ANSI Z26.1-1977. The light source beam shall be at least one-half inch in diameter or larger.
(B) Reflectance — ANSI/ASTM E308-73, “Spectrophotometry and Description of Color in CIE System,” and ANSI/ASTM C523-68, “Standard Test Method for Light Reflectance of Acoustical Materials by the Integrating Sphere Reflectometer.” The luminous reflectance shall be measured under CIE light source C with the lamp source beam being at least one-half inch in diameter or larger.

(3) Each manufacturer shall certify to the commissioner, the equipment approval program, or other agency designated by the commissioner that the product or material is in compliance with the reflectivity and transmittance requirements of this regulation.

(f) Labeling or marking—(1) Each manufacturer, except as specified in this subsection, shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the following information:

(A) Manufacturer; and

(B) Statement, “Complies with VESC-20” (vehicle equipment safety commission).

(2) A manufacturer of a glazing material which meets the requirements of above shall permanently and legibly mark the glazing material with a code or symbol denoting that it meets the reflectance and luminous transmittance requirements of this regulation.

(3) Each manufacturer shall provide on the container or package of the product or material the information specified in this subsection and a statement that the material is permitted for automotive use where state or local laws do not prohibit such use. Such information shall be permanently and legibly affixed to the container or package.

(4) Each manufacturer shall include instructions with the product or material for proper installation, including the affixing of the label specified in this subsection. The labeling or marking shall be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.
156 (5) No person may offer for sale or for use any sun screen­
ing product or material for motor vehicle use not in compliance
with this section.

159 (6) No person may install any sun screening product or
material on vehicles intended for use on public roads without
permanently affixing the label specified in this subsection.

162 (g) Nothing in this section permits or prohibits the use and
placement of federal, state or local certificates on any window
as may be required or prohibited by applicable law, nor does
it apply to public carriers.

166 (h) Anyone who violates any provision of this section is
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than twenty dollars nor more than one
hundred dollars and for each subsequent offense occurring
within a one-year period, shall be fined not more than two
hundred dollars or imprisoned in the county jail not more than
six months, or both fined and imprisoned: Provided, That
before any penalties may be imposed under this section, the
person violating any provisions of this section shall be given
thirty days to correct the violation.

CHAPTER 146

(Com. Sub. for H. B. 1839—By Mr. Yanni)

[Passed March 9, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and nine, article
seventeen, chapter seventeen-c of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to
the size and weight of certain commercial vehicles operated on
the roads and highways of this state; authorizing truck tractor­
semitrailer-trailer combinations and truck tractor-semitrailer
combinations; exceptions authorized by the United States de­
partment of transportation.

Be it enacted by the Legislature of West Virginia:

That sections two, four and nine, article seventeen, chapter seven­
teen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. SIZE, WEIGHT, AND LOAD.**

§17C-17-2. Width of vehicles.
§17C-17-4. Height and width of vehicles and loads.

§17C-17-2. Width of vehicles.

1 (a) The total outside width, exclusive of safety equipment authorized by the United States department of transportation, of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this article: Provided, That any vehicle with a total outside width of one hundred two inches, exclusive of safety equipment authorized by the United States department of transportation, may be operated on any highway within the state designated by the United States department of transportation or the commissioner of the department of highways.

11 (b) Motor buses and trackless trolley coaches with a total outside width of one hundred two inches, excluding safety equipment authorized by the United States department of transportation, may operate on any highway.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not exceed a height of twelve feet six inches, except as provided in section eleven-b of this article, and except that vehicles used as automobile transports including any load thereon shall not exceed a height of thirteen feet six inches, but the owners of such automobile transports shall be responsible to the state department of highways for any damage to bridges or other road structures, and to municipalities and utility companies for any damage to wires, traffic devices or other structures, and to any person suffering property damage when any such damage is proximately caused by the height of such vehicle or vehicles and load being in excess of twelve feet six inches.

13 (b) A motor vehicle including any load thereon shall not
14 exceed a length of thirty-five feet extreme overall dimension, inclusive of front and rear bumpers, except that any bus, truck or trackless trolley coach equipped with three axles, any school bus with two axles or any vehicle used to transport passengers by an urban mass transportation authority created pursuant to article twenty-seven, chapter eight of the code shall not exceed an overall length, inclusive of front and rear bumpers, of forty feet.

(c) Except as hereinafter provided, a combination of vehicles coupled together shall not consist of more than two units, and no such combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty feet, except as provided in section eleven-b of this article, and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article: Provided, That the limitation that a combination of vehicles coupled together shall not consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used: Provided, however, That equipment used in said combination meets the requirements of the safety regulations of the United States department of trans- portation.

(d) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States secretary of transportation, and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest, and points of loading and unloading for household goods carriers from such highways, and further, as to other highways so designated by the West Virginia commissioner of highways, shall be as follows: The maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination shall not exceed twenty-eight
feet in length and in no event shall any combinations exceed
three units, including the truck tractor: Provided, That no-	hing herein contained shall impose an overall length limitation
as to commercial motor vehicles operating in truck tractor-
semitrailer or truck tractor-semitrailer-trailer combinations.


(a) It shall be unlawful for any owner, lessee or borrower
of a vehicle or combination of vehicles to operate on any
highway such vehicle or combination of vehicles with a gross
weight in excess of the gross weight for which such vehicle
or combination of vehicles is registered or in excess of any
weight limitation set forth in this chapter, whether such
limitation be specifically stated in this chapter or set by
express authority granted in this chapter.

(b) Subject to the limit upon the weight imposed upon
the highway through any one axle as set forth in section
eight of this article, or the limit imposed upon the highway
through any tandem-axle as set forth in section eight-a of
this article, the total gross weight with load imposed upon
the highway by any one group of two or more consecutive
axles of a vehicle or combination of vehicles shall not exceed
the gross weight given for the respective distance between
the first and last axle of the total group of axles measured
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Provided, That no vehicle or combination of vehicles shall have a gross weight, including the load, in excess of sixty-five thousand pounds, except that the maximum gross weight of vehicles operating on the national system of interstate and defense highways and any highway providing reasonable access to and from terminals and facilities for food, fuel, repairs and rest within the state shall not be in excess of eighty thousand pounds and except as otherwise provided in this article. Notwithstanding the limits prescribed in subsection (b) of this section, two consecutive sets of tandem-axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem-axles is thirty-six feet or more: Provided, however, That the limits prescribed in subsection (b) of this section shall not prohibit the operation of any vehicle or combination of vehicles of a type which could be lawfully operated in accordance with gross vehicle weights in effect on the first day of January, one thousand nine hundred seventy-five: Provided further, That no maximum weight in excess of or in conflict with any weight limitations prescribed by or pursuant to any act of Congress shall be permitted on the national system of interstate and defense highways.
CHAPTER 147

(H. B. 1096—By Mr. Ballouz)

[Passed February 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correcting a printer’s error from “parts” to “parks.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

*§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

5 (1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

11 (2) Sign and execute in the name of the state by the “department of natural resources” any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

16 (3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

*Clerk’s Note: This section was amended by S. B. 411, which passed subsequent to the passage of this act.
(4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the natural resources commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the natural resources commission before such season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours’ notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the department;

(9) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the "department of natural resources" by purchase, condemnation,
lease or agreement, or accept or reject for the state, in the
name of the department of natural resources, gifts, dona-
tions, contributions, bequests or devises of money, security
or property, both real and personal, and any interest in
such property, including lands and waters, which he deems
suitable for the following purposes:

(a) For state forests for the purpose of growing timber,
demonstrating forestry, furnishing or protecting watersheds
or providing public recreation;

(b) For state parks or recreation areas for the purpose
of preserving scenic, aesthetic, scientific, cultural, archaeolog-
ical or historical values or natural wonders, or providing
public recreation;

(c) For public hunting, trapping or fishing grounds or
waters for the purpose of providing areas in which the
public may hunt, trap or fish, as permitted by the pro-
visions of this chapter, and the rules and regulations issued
hereunder;

(d) For fish hatcheries, game farms, wildlife research
areas and feeding stations;

(e) For the extension and consolidation of lands or waters
suitable for the above purposes by exchange of other lands
or waters under his supervision;

(f) For such other purposes as may be necessary to carry
out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any
species of wildlife as may be necessary to carry out the
provisions of this chapter;

(13) Sell, with the approval in writing of the governor,
timber for not less than the value thereof, as appraised by
a qualified appraiser appointed by the director, from all
lands under the jurisdiction and control of the director,
except those lands that are designated as state parks and
those in the Kanawha state forest. The appraisal shall be
made within a reasonable time prior to any sale, reduced to
writing, filed in the office of the director and shall be avail-
able for public inspection. When the appraised value of
the timber to be sold is more than five hundred dollars,
the director, before making sale thereof, shall receive sealed
bids therefor, after notice by publication as a Class II
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the publi-
cation area for such publication shall be each county in
which the timber is located. The timber so advertised shall
be sold at not less than the appraised value to the highest
responsible bidder, who shall give bond for the proper per-
formance of the sales contract as the director shall designate;
but the director shall have the right to reject any and all
bids and to readvertise for bids. If the foregoing provisions
of this section have been complied with, and no bid equal
to or in excess of the appraised value of the timber is
received, the director may, at any time, during a period of six
months after the opening of the bids, sell the timber in such
manner as he deems appropriate, but the sale price shall
not be less than the appraised value of the timber advertised.
No contract for sale of timber made pursuant to this section
shall extend for a period of more than ten years. And all
contracts heretofore entered into by the state for the sale of
timber shall not be validated by this section if the same be
otherwise invalid. The proceeds arising from the sale of
the timber so sold, shall be paid to the treasurer of the
state of West Virginia, and shall be credited to the depart-
ment and used exclusively for the purposes of this chapter:
Provided, That nothing contained herein shall prohibit the
sale of timber which otherwise would be removed from rights-
of-way necessary for and strictly incidental to the extraction
of minerals;

(14) Sell or lease, with the approval in writing of the
governor, coal, oil, gas, sand, gravel and any other minerals
that may be found in the lands under the jurisdiction and
control of the director, except those lands that are designated
as state parks. The director, before making sale or lease
thereof, shall receive sealed bids therefor, after notice by
publication 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
each county in which such lands are located. The minerals
so advertised shall be sold or leased to the highest respon-
sible bidder, who shall give bond for the proper performance
of the sales contract or lease as the director shall designate;
but the director shall have the right to reject any and all bids
and to readvertise for bids. The proceeds arising from any
such sale or lease shall be paid to the treasurer of the state of
West Virginia and shall be credited to the department and
used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the
protection of forests, and regulate fires and smoking in the
woods or in their proximity at such times and in such
localities as may be necessary to reduce the danger of forest
fires;

(16) Cooperate with departments and agencies of state,
local and federal governments in the conservation of natural
resources and the beautification of the state;

(17) Report to the governor each year all information
relative to the operation and functions of his department
and he shall make such other reports and recommendations as
may be required by the governor, including an annual
financial report covering all receipts and disbursements of
the department for each fiscal year, and he shall deliver
such report to the governor on or before the first day of
December next after the end of the fiscal year so covered.
A copy of such report shall be delivered to each house of
the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all pro-
ceedings, record and file all bonds and contracts taken or
entered into, and assume responsibility for the custody and
preservation of all papers and documents pertaining to his
office, except as otherwise provided by law;

(19) Offer and pay, in his discretion, rewards for in-
formation respecting the violation, or for the apprehension
and conviction of any violators, of any of the provisions of
this chapter;

(20) Require such reports as he may deem to be necessary
from any person issued a license or permit under the pro-
visions of this chapter, but no person shall be required to
disclose secret processes or confidential data of competitive
significance;

(21) Purchase as provided by law all equipment necessary
for the conduct of his department;

(22) Conduct and encourage research designed to further
new and more extensive uses of the natural resources of this
state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and
private organizations or groups in their efforts to publicize
the attractions of the state;

(24) Accept and expend, without the necessity of appro-
piation by the Legislature, any gift or grant of money made
to the department for any and all purposes specified in
this chapter, and he shall account for and report on all
such receipts and expenditures to the governor;

(25) Cooperate with the state historian and other ap-
propriate state agencies in conducting research with refer-
ence to the establishment of state parks and monuments of
historic, scenic and recreational value, and to take such steps
as may be necessary in establishing such monuments or parks
as he deems advisable;

(26) Maintain in his office at all times, properly in-
dexed by subject matter, and also, in chronological sequence,
all rules and regulations made or issued under the authority
of this chapter. Such records shall be available for public
inspection on all business days during the business hours of
working days;

(27) Delegate the powers and duties of his office, except
the power to execute contracts, to appointees and employees
of the department, who shall act under the direction and
supervision of the director and for whose acts he shall be
responsible;

(28) Conduct schools, institutions and other educational
programs, apart from or in cooperation with other govern-
mental agencies, for instruction and training in all phases of
the natural resources programs of the state;
(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the department in moving his household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months;

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board; and

(31) Regulate and set the digging season of native, wild ginseng: Provided, That the digging season for wild, native ginseng be set between the first day of December and the fifteenth day of November of the following year.

CHAPTER 148
(S. B. 411—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, duties and services of the director of the department of natural resources; regulation of native, wild and cultivated ginseng.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

*§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

5 (1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

12 (2) Sign and execute in the name of the state by the "department of natural resources" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

17 (3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

20 (4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the natural resources commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the natural resources commission before such season and bag limits are fixed by it;

*Clerk's Note: This section was also amended by H. B. 1096, which passed prior to the passage of this act.
35 (7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

36 (8) Supervise the fiscal affairs and responsibilities of the department;

37 (9) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

38 (10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

39 (11) Acquire for the state in the name of the "department of natural resources" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

40 (a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

41 (b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

42 (c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;
(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha state forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication 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 each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the
timber so sold, shall be paid to the treasurer of the state of
West Virginia, and shall be credited to the department and
used exclusively for the purposes of this chapter: Provided,
That nothing contained herein shall prohibit the sale of
timber which otherwise would be removed from
rights-of-way necessary for and strictly incidental to the
extraction of minerals;

(14) Sell or lease, with the approval in writing of the
governor, coal, oil, gas, sand, gravel and any other minerals
that may be found in the lands under the jurisdiction and
control of the director, except those lands that are designated
as state parks. The director, before making sale or lease
thereof, shall receive sealed bids therefor, after notice by
publication 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
each county in which such lands are located. The minerals so
advertised shall be sold or leased to the highest responsible
bidder, who shall give bond for the proper performance of the
sales contract or lease as the director shall designate; but the
director shall have the right to reject any and all bids and to
readvertise for bids. The proceeds arising from any such sale
or lease shall be paid to the treasurer of the state of West
Virginia and shall be credited to the department and used
exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for the
protection of forests, and regulate fires and smoking in the
woods or in their proximity at such times and in such
localities as may be necessary to reduce the danger of forest
fires;

(16) Cooperate with departments and agencies of state,
local and federal governments in the conservation of natural
resources and the beautification of the state;

(17) Report to the governor each year all information
relative to the operation and functions of his department and
he shall make such other reports and recommendations as
may be required by the governor, including an annual
financial report covering all receipts and disbursements of
the department for each fiscal year, and he shall deliver such
report to the governor on or before the first day of December
next after the end of the fiscal year so covered. A copy of such
report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office, except as otherwise provided by law;

(19) Offer and pay, in his discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(21) Purchase as provided by law all equipment necessary for the conduct of his department;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any and all purposes specified in this chapter, and he shall account for and report on all such receipts and expenditures to the governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he deems advisable;

(26) Maintain in his office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection
Delegate the powers and duties of his office, except the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the department in moving his household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months;

Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board; and

Regulate the digging, possession and sale of native, wild or cultivated ginseng: Provided, That the digging season for wild, native or cultivated ginseng shall begin on the fifteenth day of August and end on the thirtieth day of November of each year unless otherwise authorized by the director. Ginseng dealers shall: (a) Obtain a ginseng dealer's permit from the director of the department of natural resources; (b) keep on forms provided by the director accurate records for all ginseng acquired showing the year harvested, the date acquired by the dealer, county of origin, weight and whether wild or cultivated; and (c) have all records and all acquired ginseng inspected by the director at official ginseng inspection stations for the purpose of certifying the dealer's records and issuing a certificate
documenting the inspection and the weight of the ginseng. All ginseng dug in West Virginia must be certified by the director before being transported or shipped out of the state. No person shall have in his possession uncertified green ginseng from the first day of April through the fourteenth day of August.

CHAPTER 149

(5. B. 707—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-c, relating to cooperation with the federal government in the management of federal lands within the state; and adoption of rules and regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-18c. Cooperation with federal government in management of federal lands within the state.

1 The Legislature recognizes that there are large areas of this state that are owned by or under the control of the government of the United States. In order to cooperate with the various federal agencies which have jurisdiction over these areas and to effectively enforce rules and regulations to protect these areas, the Legislature hereby authorizes the director to adopt such rules and regulations as are necessary to cooperate in all law-enforcement activities with the various federal agencies. Such rules and regulations shall be adopted according
to the administrative procedures act as provided in chapter twenty-one-a of this code. To the extent that any rules and regulations adopted by the director are identical to existing federal rules and regulations, they may be promulgated without the procedures required under the administrative procedures act except that there shall be public notice of the adoption of such regulations and they shall be filed in the office of the secretary of state.

CHAPTER 150
(H. B. 1993—By Mr. Shiflet and Mr. Harman)

[Passed March 12, 1983; in effect from passage. Approval by the Governor.]

AN ACT to amend and reenact section eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to audit of county and municipal funds by the tax commissioner; payment of costs of audit: revolving fund; charges for costs limited.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution, shall be paid by the county commission of the county; the cost thereof as to any board of education shall be paid by such board; the cost thereof as to any municipal corporation shall be paid by the authorities thereof: Provided, That in municipalities in which the total revenue from all taxes does not exceed the sum of two thousand dollars annually, such cost including the per diem and all
actual costs and expenses of such services shall not exceed the sum of sixty dollars. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help and such other costs as may be necessary to enable them to perform the services required, but in no event shall such costs exceed the sum of two thousand dollars for services rendered to a Class III or a Class IV municipality. The chief inspector shall render to the agency liable for such cost a statement thereof as soon after the same was incurred as practicable, and it shall be the duty of such agency to allow the same, and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid, and such total amount shall constitute a debt against the local agency due the state. Whenever there is in the state treasury a sum of money due any such county commission, board of education or municipality from any source, upon the application of the chief inspector, the same shall be at once applied on the debt aforesaid against the county commission, board of education or municipality, and the fact of such application of such fund shall be reported by the auditor to the said county commission, board of education or municipality, which report shall be a receipt for the amount therein named. All money received by the chief inspector from this source shall be paid into the state treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of such services, unless otherwise directed by the Legislature. The cost of any such examination, service or act by the chief inspector made necessary, or such part thereof as was made necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from such person, on motion, on ten days' notice in any court having jurisdiction.

For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:
(1) There shall be appropriated from the state fund general revenue the sum of twenty-five thousand dollars to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service.

(2) Payments received for the cost of services of the chief inspector's office shall be deposited into this revolving fund, which shall be known as the chief inspector's fund.

(3) Any appropriations made to this fund shall not be deemed to have expired at the end of any fiscal period.

CHAPTER 151
(Com. Sub. for S. B. 657—By Mr. Loehr)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal waterworks and electric power systems; construction of improvements; extension beyond corporate limits; right of eminent domain; exempting municipal electric power systems from requirement of certificate of convenience and necessity.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article nineteen, 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 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITIONS.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.
§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.
PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establishing
2 or extending any waterworks system, or for the purpose
3 of constructing any additions, betterments or improve-
4 ments to any waterworks or electric power system, or for
5 the purpose of acquiring any property necessary, appro-
6 priate, useful, convenient or incidental for or to any
7 waterworks or electric power system, under the provi-
8 sions of this article, the municipality shall have the right
9 of eminent domain as provided in chapter fifty-four of
10 this code: Provided, That such right of eminent domain
11 for the acquisition of a complete privately owned water-
12 works system shall not be exercised without prior
13 approval of the public service commission, and in no
14 event shall any municipality construct, establish or extend
15 beyond the corporate limits of said municipality a munici-
16 pal waterworks or electric power system under the pro-
17 visions of this article to supply service in competition
18 with an existing privately or municipally owned water-
19 works or electric power system in such municipality or
20 within the proposed extension of such system, unless a
21 certificate of public convenience and necessity therefor
22 shall have been issued by the public service commission.
23 Nothing herein shall prohibit a municipal electric power
24 system from constructing, operating and maintaining elec-
25 tric generators or electric generating systems or electric
26 transmission systems outside of said municipality and
27 said electric generation systems shall not be under the
28 jurisdiction of the public service commission.

CHAPTER 152
(S. B. 588—By Mr. Boettner)

(Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section fifty, article twenty-
four, chapter eight of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to land use under preexisting ordinances; prohibited uses shall not apply outside of urban areas

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. INTERGOVERNMENTAL RELATIONS—URBAN AND RURAL PLANNING AND ZONING.

§8-24-50. Existing uses safeguarded.

Such zoning ordinance or ordinances shall not prohibit the continuance of the use of any land, building or structure for the purpose for which such land, building or structure is used at the time such ordinance or ordinances take effect, but any alteration or addition to any land or any alteration, addition or replacement of or to any existing building or structure for the purpose of carrying on any use prohibited under the zoning rules and regulations applicable to the district may be prohibited: Provided, That no such prohibition shall apply, outside of urban areas, to alterations or additions to or replacement of buildings or structures by any farm, industry or manufacturer, or to the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or to the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation or any present or future satellite agricultural, industrial or manufacturing use. If a nonconforming use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structure may be located: Provided, however, That abandonment of any particular agricultural, industrial or manufacturing process, outside of urban areas, shall not be construed as abandonment of agricultural, industrial or manufacturing use.
Nothing contained in this article shall be deemed to authorize an ordinance, rule and regulation which would prevent, outside of urban areas, the complete use and alienation of any timber and any and all minerals, including coal, oil and gas, by the owner or alienee thereof. For the purpose of this section, urban area shall include all lands or lots within the jurisdiction of a municipal planning commission as defined in this article.

CHAPTER 153
(H. B. 1860—By Mr. Minard and Mr. Schifano)
[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article twenty-a, chapter 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 five, relating to neighborhood rehabilitation; the use of community development funds to provide loans and grants to persons qualified as living in owner-occupied, single family units within counties and municipalities; removing certain limitations by giving counties and municipalities the authority to provide loans and grants to the owners of rental units which are not necessarily owner-occupied and contain more than four units; and allowing deferred repayment of loans.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article twenty-a, chapter 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 five, all to read as follows:

ARTICLE 20A. NEIGHBORHOOD REHABILITATION.
§8-20A-1. Legislative findings and purpose.
§8-20A-1. **Legislative findings and purpose.**

(a) The Legislature hereby finds and declares that the lack of safe, decent, sanitary and affordable owner-occupied and rental dwellings is one of the most serious problems facing this state and that a major contributing factor to this problem is the deterioration of the state's existing housing stock; that these deteriorating dwellings exist in both the urban and rural areas of the state; that a disproportionate number of owners of these deteriorating dwellings are older, less affluent and otherwise less able to afford the expense of the remodeling, repairing and rehabilitating of their residences necessary to maintain such residences in a sanitary, safe and decent condition; that because of the lack of acceptable loan collateral, the age of their residences and the location and age of the neighborhoods in which their residences are located, many of such owners have not been able to borrow funds necessary to effect such remodeling, repair and rehabilitation; and that some of such homeowners who have been able to obtain funds for such purposes have been able to do so only upon rates of interest and upon other terms and conditions which are particularly onerous and disadvantageous to such owners.

(b) The Legislature further finds and declares that the assistance authorized in this article will provide, and will encourage private lenders to provide, to such owners, more readily and at rates of interest and upon other terms and conditions significantly more favorable to such owners, the loans necessary to finance the cost of such remodeling, repair and rehabilitation.

(c) The Legislature further finds and declares that the powers granted to municipalities and counties in this article will enable them to maximize the use of federal programs for housing rehabilitation.

(d) The Legislature further finds and declares that it is manifestly in the public interest to foster the pride, self-respect and esteem incident to home ownership and to encour-
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age and assist in the maintenance of residences, both owner
occupied and rental, in a safe, decent and sanitary condition;
that without the assistance authorized in this article, there will
be continued deterioration of housing with the resultant prolif-
eration of slums, higher crime rates and general decline in
civic pride, public spirit and the quality of life, with all of the
public cost, direct and indirect, attendant thereon; and that
accordingly by providing such assistance, any municipality or
county will be acting in all respect for the benefit of the
people of the state of West Virginia and shall thereby serve a
public purpose in improving and otherwise promoting their
health, welfare and prosperity. In order to carry out the general
purposes stated herein, the Legislature further declares that
the governing body of any county or municipality shall, inso-
far as it may deem reasonable and proper, give preference to
the rehabilitation of owner-occupied dwellings when making
grants or loans under this article.


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

(1) "Eligible dwelling" means real estate upon which there
is located a structure designed primarily for residential hous-
ing and consisting of dwelling units for not more than thirty
families: Provided, That all ownership thereof shall be limited
to persons who would qualify as eligible owners.

(2) "Eligible owner" means a person or persons residing
within the boundaries of a municipality or county, and owning
an eligible dwelling within the boundaries of that municipality
or county, irrespective of race, creed, national origin or sex,
with respect to whom it is determined by the governing body
of such municipality or county that (a) such person or persons,
because of financial condition, age, infirmity, family size or
other reasons, is unable to obtain, on suitable terms and con-
ditions, loans or other credit necessary for the rehabilitation
of such eligible dwelling, and hence requires the assistance as
provided in this article, (b) such rehabilitation is necessary to
place such eligible dwelling in a safe, sanitary and decent con-
dition, and (c) the assistance as authorized in this article shall
make financing available to such person or persons, or enable
such person or persons, to obtain such financing on terms and
conditions substantially more favorable to such person or
persons than would otherwise be available.

(3) "Rehabilitation" means a specific work of improvement
within a municipality or county undertaken primarily to re-
model, repair or rehabilitate an eligible dwelling.


(a) Any municipality or county shall have plenary power
and authority, by charter provision, ordinance or resolu-
tion, to establish a special fund of moneys made available by
appropriation, grant, contribution, loan or otherwise, to be
known as the neighborhood rehabilitation fund of such mu-
nicipality or county, to be governed, administered and ac-
counted for by the governing body of such municipality or
county, as a special purpose account, separate and distinct
from any other moneys, fund or funds owned by such
municipality or county.

(b) The governing body of any municipality or county
may, from time to time, by resolution, establish criteria
which shall govern the determination of persons who qualify
as eligible owners and the amount of assistance to such
owners.

(c) The purpose of such neighborhood rehabilitation fund
shall be to provide funds for the making of grants and
loans, or to guarantee the repayment of loans made by
private lenders, to eligible residents of such municipality or
county, the proceeds of which loans and grants are to be
used exclusively for rehabilitation.

(d) Such loans shall be made or guaranteed and grants
made only upon determination by the governing body of such
municipality or county, or by a board or commission ap-
pointed for such purpose by such governing body, that the
recipients are eligible owners, that the proceeds of the loan
or grant shall be used for rehabilitation and that loans or
grants to such eligible recipients for rehabilitation are not
otherwise available upon reasonably equivalent terms and
conditions: Provided, That grants may be given only for the
rehabilitation of residences occupied by their owners.
(e) No loan shall be made or guaranteed by such municipality or county except in accordance with a written agreement between such municipality or county, the eligible owner and in the case of a guaranteed loan the lender making such loan, which agreement shall provide, without limitation, that:

(1) The proceeds of such loan shall be used exclusively for rehabilitation;

(2) The loan shall be in such principal amount, repayable in such number of consecutive and substantially equal monthly installments at such annual rate of interest and shall be secured in such manner as specified in such agreement;

(3) In the case of a guaranteed loan, such municipality or county shall be obligated to repay, from the neighborhood rehabilitation fund established in accordance with this article, any installment or installments of such loan as shall be in default from time to time in accordance with the provisions of such agreement;

(4) In the event an eligible owner defaults on such loan made by such municipality or county, or in the event such municipality or county incurs an obligation on a guaranteed loan, such municipality or county shall be entitled, at its option, to realize on any and all security for said loan: Provided, That the right of such municipality or county to realize on such security with respect to a guaranteed loan shall be subordinate and secondary to the right of the lender as to such security, to the extent of the unpaid balance of such loan.

(f) Nothing in this article contained shall be so construed as to authorize any municipality or county to make any contract or incur any obligation or liability of any kind or nature, except such as shall be discharged or payable solely from the funds on deposit in such neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

In addition to all other powers and rights of a municipality or county, any municipality or county shall have plenary power
and authority, at the request of eligible owners, to inspect the
residences of such eligible owners, to make recommendations
concerning rehabilitation and to provide all manner of tech-
tical services and assistance in the planning, processing and
design of needed rehabilitation.


The governing body of a municipality or county may, at its
discretion, establish criteria for extreme hardship (by reason
of age, low income, disability or other factors) applicable to
an eligible owner, and which criteria will permit deferral of
repayment of a portion or of all the loan until a definite future
date, the death of the eligible owner or the sale of the "eligible
dwelling" to another owner, whichever occurs first. The eligi-
able owner for the purposes of this section shall be interpreted
as the person in whom title of the property is vested or the
spouse of said eligible owner at the time the rehabilitation loan
or grant, or both, is provided.

CHAPTER 154

(Com. Sub. for H. B. 1392—By Mr. Martin)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-g, one-k, twelve-b,
fifteen, sixteen and seventeen, article four, chapter twenty-two
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact section two, article
seven of said chapter twenty-two; to further amend said article
four by adding thereto four new sections, designated sections
one-m, one-n, one-o and twenty-one; and to further amend said
chapter twenty-two by adding thereto a new article, designated
article four-c, all relating to defining "waste" and "well work"
with regard to oil and gas wells; broadening the scope of an oil
and gas inspector's duty to investigate whether imminent danger
exists from violations of the provisions of this article; providing
for the service of the permit application and other documents
upon the owner of surface lands; providing to surface landowners an opportunity to comment on issuance of a permit; permits required for well work; applications; contents thereof; responsible agents named; permit numbers; denial of permits; modification of applications; creating additional reclamation requirements; granting the administrator the right to prevent waste of gas; granting the administrator the same rights as others to restrain waste of natural gas; providing criminal penalties; creating a civil penalty of two thousand five hundred dollars for violation of the provisions of this article or any rule or order promulgated by the department; raising the criminal penalty fine for willful violation from two thousand dollars to five thousand dollars; providing a cause of action for damages caused by explosions occurring before or after the effective date of this article; providing for compensation to surface owners for damage caused by the production of oil and gas; definitions; creating a rebuttable presumption regarding rotary drilling and severance of oil and gas rights from the surface estate; detailing compensable damages; preserving common law remedies; providing for notice of claim; settlements; election of remedies; arbitration provided; severability; and requiring anyone injecting gas into or storing gas in a storage reservoir to file a map and data required by the federal energy regulatory commission with the department.

Be it enacted by the Legislature of West Virginia:

That sections one, one-g, one-k, twelve-b, fifteen, sixteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article seven of said chapter be amended and reenacted; that article four of said chapter be further amended by adding thereto four new sections, designated sections one-m, one-n, one-o and twenty-one; and that said chapter twenty-two be further amended by adding thereto a new article, designated article four-c, all to read as follows:

Article

4. Oil and Gas Wells.

4C. Oil and Gas Production Damage Compensation.


ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.
§22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

§22-4-1k. Permit required for well work; permit fee; application; soil erosion control plan.

§22-4-1m. Notice to property owners.

§22-4-1n. Procedure for filing comments; certification of notice.

§22-4-1o. Review of application; issuance of permit in the absence of objections and comments.

§22-4-12b. Reclamation requirements.

§22-4-15. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.

§22-4-16. Restraining waste.

§22-4-17. Offenses; penalties.

§22-4-21. Cause of action for damages caused by explosion.

§22-4-1. Definitions.

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

2 (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

3 (b) "Cement" means hydraulic cement properly mixed with water;

4 (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

5 (d) "Chief" means chief of the division of water resources of the department of natural resources;

6 (e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

7 (f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

8 (g) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of
the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(h) "Department" or "department of mines" means, for purposes of this article and articles five and seven of this chapter, the office of oil and gas of the department of mines;

(i) "Administrator" means the head of the office of oil and gas of the department of mines and all references to the "deputy director" shall be defined to mean the administrator of the office of oil and gas;

(j) "Expanding cement" means any cement approved by the office of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;

(k) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;

(l) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (m) of this section;

(m) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;

(n) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

(o) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(p) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other represen-
(q) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(r) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

(s) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(t) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(u) "Stimulate" means any action taken by a well operator to increase the inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article four-a of this chapter and the provisions of article four-b of this chapter; (v) inefficient storing of oil or
gas: *Provided*, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient; and (vi) other underground or surface waste in the production or storage of oil, gas, or condensate, however caused;

(w) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(x) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(y) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined; and

(z) "Office of oil and gas" or "office" means the office of oil and gas within the department of mines charged with the responsibility of administering the provisions of chapter twenty-two, articles four, five and seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§22-4-lg. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

(a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, he shall also find whether or not an imminent danger to persons exists, or whether or not there exists an imminent danger that a fresh
water source or supply will be contaminated or lost. If he
finds that such imminent danger exists, he shall forthwith make
an order requiring the operator of such well or well site or
other oil or gas facility to cease further operations until such
imminent danger has been abated. If he finds that no such
imminent danger exists, he shall determine what would be a
reasonable period of time within which such violation should
be totally abated. Such findings shall contain reference to the
provisions of this article which he finds are being violated,
and a detailed description of the conditions which cause and
constitute such violation.

(b) The period of time so found by such oil and gas in-
spector to be a reasonable period of time shall not exceed
seven days. Such period may be extended by such inspector,
or by any other oil and gas inspector duly authorized by the
administrator, from time to time, for good cause, but not to
exceed a total of thirty days, upon the making of a special in-
spection to ascertain whether or not such violation has been
totally abated: Provided, That such thirty-day period may be
extended beyond thirty days by such inspectors where abate-
ment is shown to be incapable of accomplishment because of
circumstances or conditions beyond the control of the well
operator. The administrator shall cause a special inspection to
be made: (A) Whenever an operator of a well or well site or
any other oil or gas facility, prior to the expiration of any such
period of time, requests him to cause a special inspection to
be made at such well or well site or any other oil or gas fa-
cility; and (B) Upon expiration of such period of time as
originally fixed or as extended, unless the administrator is
satisfied that the violation has been abated. Upon making such
special inspection, such oil and gas inspector shall determine
whether or not such violation has been totally abated. If he
determines that such violation has not been totally abated, he
shall determine whether or not such period of time as original-
ly fixed, or as so fixed and extended, should be extended. If
he determines that such period of time should be extended, he
shall determine what a reasonable extension would be. If he
determines that such violation has not been totally abated, and
if such period of time as originally fixed, or as so fixed and
extended, has then expired, and if he also determines that such
period of time should not be further extended, he shall there-
upon make an order requiring the operator of such well or
well site or other oil or gas facility to cease further operations
of such well, well site or facility, as the case may be. Such
findings and order shall contain reference to the specific pro-
visions of this article which are being violated.

(c) Notice of each finding and order made under this sec-
section shall promptly be given to the operator of the well or
well site or other oil or gas facility to which it pertains by the
person making such finding or order.

(d) No order shall be issued under the authority of this
section which is not expressly authorized herein.

§22-4-1k. Permit required for well work; permit fee; application;
soil erosion control plan.

(a) It is unlawful for any person to commence any well
work, including site preparation work which involves any dis-
turbance of land, without first securing from the administrator
a well work permit. An application may propose and a permit
may approve two or more activities defined as well work.

(b) The application for a well work permit shall be accom-
panied by the applicable bond as prescribed by section two,
two-b or nine of this article, and the applicable plat required
by section two or two-b of this article.

(c) Every permit application filed under this section shall
be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii)
the agent required to be designated under subsection (e) of
this section, and (iii) every person whom the applicant must
notify under any section of this article together with a certifi-
cation and evidence that a copy of the application and all other
required documentation has been delivered to all such persons;

(2) The name and address of every coal operator operating
coal seams under the tract of land on which the well is or may
be located, and the coal seam owner of record and lessee of
record required to be given notice by section two, if any, if said
owner or lessee is not yet operating said coal seams;
(3) The number of the well or such other identification as the administrator may require;

(4) The type of well;

(5) The well work for which a permit is requested;

(6) The approximate depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled;

(7) Any permit application fee required by law;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an oil well or a combination well or to drill a new well for the purpose of introducing pressure for the recovery of oil as provided in section ten-a of this article, specifications in accordance with the data requirements of section two-b of this article;

(10) If the proposed well work is to plug or replug the well, (i) specifications in accordance with the data requirements of section nine of this article, (ii) a copy of all logs in the operator's possession as the administrator may require, and (iii) a work order showing in detail the proposed manner of plugging or unplugging the well, in order that a representative of the administrator and any interested persons may be present when the work is done. In the event of an application to drill, redrill or deepen a well, if the well work is unsuccessful so that the well must be plugged and abandoned, and if the well is one on which the well work has been continuously progressing pursuant to a permit, the operator may proceed to plug the well as soon as he has obtained the verbal permission of the administrator or his designated representative to plug and abandon the well, except that the operator shall make reasonable effort to notify as soon as practicable the surface owner and the coal owner, if any, of the land at the well location, and shall also timely file the plugging affidavit required by section nine of this article;
(11) If the proposed well work is to stimulate an oil or gas well, specifications in accordance with the data requirements of section two-a of this article;

(12) The erosion and sediment control plan required under subsection (d) of this section for applications for permits to drill; and

(13) Any other relevant information which the administrator may require by rule.

(d) An erosion and sediment control plan shall accompany each application for a well work permit except for a well work permit to plug or replug any well. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and from time to time amended by the office of oil and gas, in consultation with the several soil conservation districts pursuant to the control program established in this state through section 208 of the federal Water Pollution Control Act Amendments of 1972. The erosion and sediment control plan shall become part of the terms and conditions of a well work permit, except for a well work permit to plug or replug any well, which is issued and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section twelve-b of this article.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article five-a, chapter twenty, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

(f) The well owner or operator shall install the permit num-
ber as issued by the administrator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the administrator.

(g) The administrator may waive the requirements of this section and sections one-m, one-n and one-o of this article in any emergency situation, if he deems such action necessary. In such case the administrator may issue an emergency permit which would be effective for not more than thirty days, but which would be subject to reissuance by the administrator.

(h) For the purpose of ascertaining whether or not issuance of any permit for well work will cause or contribute to a pollution problem, the administrator shall consult with the director of the department of natural resources. In the event the issuance of any such permit may reasonably be expected to cause or contribute to any such pollution, then the administrator shall not issue such permit.

(i) The administrator shall deny the issuance of a permit if he determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation within the time prescribed by the administrator pursuant to the provisions of sections one-g and one-h of this article and the rules promulgated hereunder, which time may not be unreasonable: Provided, That in the event that the administrator does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, he may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit: Provided, however, That the administrator may reinstate the permit without further notice, at which time the well work may be continued. The administrator shall make written findings of any such determination made by him and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section four of this article. The administrator shall make a written finding of any such determination.
(j) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22-4-1m. Notice to property owners.

(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section one-k of this article to each of the following persons:

1. The owners of record of the surface of the tract on which the well is, or is to be located; and

2. The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if such surface tract is to be utilized for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to section one-k of this article.

(b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the administrator shall prescribe by rule, with the first publication date being at least ten days prior to the filing of the permit application: Provided, That all owners occupying the tracts where the well work is, or is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Materials served upon persons described in subsections...
(a) and (b) of this section shall contain a statement of the methods and time limits for filing comments, who may file comments and the name and address of the administrator for the purpose of filing comments and obtaining additional information and a statement that such persons may request, at the time of submitting comments, notice of the permit decision and a list of persons qualified to test water as provided in this section.

(d) Any person entitled to submit comments shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comments concerning said permit application.

(e) Persons entitled to notice may contact the district office of the department to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the department shall consult with the state and local health departments.

§22-4-1n. Procedure for filing comments; certification of notice.

(a) All persons described in subsections (a) and (b), section one-m of this article may file comments with the administrator as to the location or construction of the applicant's proposed well work within fifteen days after the application is filed with the administrator.

(b) Prior to the issuance of any permit for well work, the applicant shall certify to the administrator that the requirements of section one-m of this article have been completed by the applicant. Such certification may be by affidavit of personal service or the return receipt card or other postal receipt for certified mailing.

§22-4-1o. Review of application; issuance of permit in the absence of objections and comments.

The administrator shall review each application for a well work permit and shall determine whether or not a permit shall be issued.
No permit may be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging may be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the plat required by section one-k of this article, and further files written statements of no objection by all such persons, the administrator may issue the well work permit at any time.

The administrator may cause such inspections to be made of the proposed well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the administrator determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

The administrator shall promptly review all comments filed. If after review of the application and all comments received, the application for a well work permit is approved, and no timely objection or comment has been filed with the administrator or made by the department under the provisions of section three, three-a or three-b of this article, the permit shall be issued, with conditions, if any. Nothing in this section shall be construed to supersede the provisions
of sections one-k, two, two-a, two-b, three, three-a and three-b of this article.

The administrator shall mail a copy of the permit as issued or a copy of the order denying a permit to any person who submitted comments to the administrator concerning said permit and requested such copy.

§22-4-12b. Reclamation requirements.

The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

(a) Within six months after the completion of the drilling process, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris, and fill any remaining excavations. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

The administrator may, upon written application by an operator showing reasonable cause, extend the period within which reclamation shall be completed, but not to exceed a further six-month period.

If the administrator refuses to approve a request for extension, he shall do so by order.
(c) It shall be the duty of an operator to commence the reclamation of the area of land disturbed in siting, drilling, completing or producing the well in accordance with soil erosion and sediment control plans approved by the administrator or his designate.

(d) The administrator shall promulgate rules setting forth requirements for the safe and efficient installation and burying of all production and gathering pipelines where practical and reasonable except that such rules shall not apply to those pipelines regulated by the public service commission.

§22-4-15. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.

If the owner or operator of any such well shall neglect or refuse to drill, case and equip, or plug and abandon, or shut in and conserve from waste the gas produced therefrom, as required to be done and performed by the preceding sections of this article, for a period of twenty days after a written notice so to do, which notice may be served personally upon the owner or operator, or may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands or the administrator to enter upon the premises where such well is situated and properly case and equip such well, or, in case the well is to be abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it in and make such needed repairs to the well to prevent the waste of gas, in the manner required to be done by the preceding sections of this article; and the reasonable cost and expense incurred by an owner, operator or the administrator in so doing shall be paid by the owner or operator of such well and may be recovered as debts of like amount are by law recoverable.

The administrator may utilize funds and procedures established pursuant to section twelve-a of this article for the purposes set out in this section. Amounts recovered by the administrator pursuant to this section shall be deposited in the oil and gas reclamation fund established pursuant to section twelve-a of this article.
§22-4-16. Restraining waste.

1 Aside from and in addition to the imposition of any penalties under this article, it shall be the duty of any circuit court in the exercise of its equity jurisdiction to hear and determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this article, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas or either of them or as the administrator.

§22-4-17. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated hereunder shall be subject to a civil penalty not exceeding two thousand five hundred dollars. Each day a violation continues after notice by the office of oil and gas constitutes a separate offense. The penalty shall be recovered by a civil action brought by the office of oil and gas, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All such civil penalties collected shall be credited to the general fund of the state.

(b) Any person or persons, firm, partnership, partnership association or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste, or which fix the distance from wells within which mining operations shall not be conducted without the approval of the office of oil and gas, or violating the terms of any order of the office of oil and gas allowing mining operations within a lesser distance of any well than that prescribed by the article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a
fine not exceeding five thousand dollars, or imprisoned in jail
for not exceeding twelve months, or both, in the discretion of
the court, and prosecutions under this section may be brought
in the name of the state of West Virginia in the court exer-
cising criminal jurisdiction in the county in which the violation
of such provisions of the article or terms of such order was
committed, and at the instance and upon the relation of any
citizens of this state.

§22-4-21. Cause of action for damages caused by explosions.

Any person suffering personal injury or property damage
due to any explosion caused by any permittee, shall have a
cause of action against such permittee for three years after
the explosion regardless of whether the explosion occurred
before or after the effective date of this article.

ARTICLE 4C. OIL AND GAS PRODUCTION DAMAGE COMPENSA-
TION.

§22-4C-1. Legislative findings and purpose.
§22-4C-2. Definitions.
§22-4C-3. Compensation of surface owners for drilling operations.
§22-4C-4. Common law right of action preserved; offsets.
§22-4C-5. Notification of claim.
§22-4C-6. Agreement; offer of settlement.
§22-4C-7. Rejection; legal action; arbitration; fees and costs.
§22-4C-8. Application of article.
§22-4C-9. Severability.

§22-4C-1. Legislative findings and purpose.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas re-
serves in this state must coexist with the use, agricultural or
otherwise, of the surface of certain land and that each consti-
tutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require
the use of substantially more surface area than the methods
commonly in use at the time most mineral estates in this state
were severed from the fee tract; and, specifically, the drilling
of wells by the rotary drilling method was virtually unknown
in this state prior to the year one thousand nine hundred
sixty, so that no person theretofore severing his oil and gas
from his surface land and no person theretofore leasing his oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reason-
ably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling methods has spread slowly but steadily in this state, with con-
comitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be en-
titled to fair compensation for the loss of the use of his surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.

(3) Prior to the first day of January, one thousand nine hundred sixty, the rotary method of drilling oil or gas wells was virtually unknown to the surface owners of this state nor was such method reasonably contemplated during the negotiations which occasioned the severance of either oil or gas from the surface.

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the effective date of this article, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear, preponderance of the evidence showing that the surface owner or his predecessor of record did in fact know of the rotary drilling method at the time he or his predecessor executed a severance deed or lease of oil and gas and that he fairly contemplated the rotary drill-
ing method and received compensation for the same.

(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section
shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the effective date of this article.

(d) It is the purpose of this article to provide constitutionally permissible protection and compensation to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the effective date of this article. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

§22-4C-2. Definitions.

(a) In this article, unless the context or subject matter otherwise requires:

(1) “Agricultural production” means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) “Drilling operations” means the actual drilling or re-drilling of an oil or gas well commenced subsequent to the effective date of this article, and the related preparation of the drilling site and access road, which requires entry upon the surface estate;

(3) “Oil and gas developer” means the person who secures the drilling permit required by article four of this chapter;

(4) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver.
trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) "Surface estate" means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) "Surface owner" means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.

§22-4C-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed, (2) the market value of crops destroyed, damaged or prevented from reaching market, (3) any damage to a water supply in use prior to the commencement of the permitted activity, (4) the cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality, and (5) the diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-owner-
ship, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22-4C-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of his mineral interest.

(b) An oil and gas operator shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three against any damages sought by or awarded to the surface owner through the assertions of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas operator shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common law remedies against compensation sought by or awarded to the surface owner under section three respecting the surface land actually occupied by the same drilling operation.

§22-4C-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that he is commencing reclamation under section twelve-b, article four of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be
maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the administrator shall prescribe by rule.

§22-4C-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.

§22-4C-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section one-k, article four of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in his notice of election under this section to the oil
and gas developer; the second arbitrator shall be chosen by
the oil and gas developer within ten days after receipt of
the notice of election; and the third arbitrator shall be chosen
jointly by the first two arbitrators within twenty days there-
after. If they are unable to agree upon the third arbitrator
within twenty days, then the two arbitrators are hereby
empowered to and shall forthwith submit the matter to the
court under the provisions of section one, article ten, chapter
fifty-five of this code, so that, among other things, the third
arbitrator can be chosen by the judge of the circuit court of
the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and
not be appointed as arbitrators: Any person who is personally
interested in the land on which rotary drilling is being per-
formed or has been performed, or in any interest or right
therein, or in the compensation and any damages to be
awarded therefor, or who is related by blood or marriage
to any person having such personal interest, or who stands
in the relation of guardian and ward, master and servant,
principal and agent, or partner, real estate broker, or surety
to any person having such personal interest, or who has
enmity against or bias in favor of any person who has
such personal interest or who is the owner of, or interested
in, such land or the oil or gas development thereof. No
person shall be deemed interested or incompetent to act as
arbitrator by reason of his being an inhabitant of the county,
district or municipal corporation wherein the land is located,
or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take
such testimony and receive such exhibits as shall be necessary
to determine the amount of compensation to be paid to the
surface owner. However, no award of compensation shall be
made to the surface owner unless the panel of arbitrators
has first viewed the surface estate in question. A transcript of
the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of his own
arbitrator and one half of the compensation of the third
arbitrator, or his own court costs as the case may be.
§22-4C-8. Application of article.

1 The remedies provided by this article shall not preclude any person from seeking other remedies allowed by law.

§22-4C-9. Severability.

1 If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

ARTICLE 7. UNDERGROUND GAS STORAGE RESERVOIRS.

§22-7-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on the effective date of this article, is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the department a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on the effective date of this article, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the department may fix.

Any person who, after the effective date of this article, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the department not less than six months prior to the starting of actual injection or storage.

The map provided for herein shall be prepared by a competent engineer or geologist. It shall show the stratum
or strata in which the existing or proposed storage reservoir
is or is to be located, the geographic location of the outside
boundaries of the said storage reservoir and the reservoir
protective area, the location of all known oil or gas wells
which have been drilled into or through the storage stratum
within the reservoir or within three thousand linear feet
thereof, indicating which of these wells have been, or are
to be cleaned out and plugged or reconditioned for storage
and also indicating the proposed location of all additional
wells which are to be drilled within the storage reservoir or
within three thousand linear feet thereof.

The following information, if available, shall be furnished
for all known oil or gas wells which have been drilled into
or through the storage stratum within the storage reservoir
or within three thousand linear feet thereof; name of the
operator, date drilled, total depth, depth of production if the
well was productive of oil or gas, the initial rock pressure
and volume, the depths at which all coal seams were en-
countered and a copy of the driller's log or other similar
information. At the time of the filing of the aforesaid maps
and data such person shall file a detailed statement of what
efforts he has made to determine, (1) that the wells shown
on said map are accurately located thereon, and (2) that to
the best of his knowledge they are all the oil or gas wells
which have ever been drilled into or below the storage
stratum within the proposed storage reservoir or within the
reservoir protective area. This statement shall also include
information as to whether or not the initial injection is for
testing purposes, the maximum pressures at which injection
and storage of gas is contemplated, and a detailed explanation
of the methods to be used or which theretofore have been
used in drilling, cleaning out, reconditioning or plugging
wells in the storage reservoir or within the reservoir pro-
tective area. The map and data required to be filed hereunder
shall be amended or supplemented semiannually in case any
material changes have occurred: Provided, That the depart-
ment may require a storage operator to amend or supplement
such map or data at more frequent intervals if material changes
have occurred justifying such earlier filing.
At the time of the filing of the above maps and data, and the filing of amended or supplemental maps or data, the department shall give written notice of said filing to all persons who may be affected under the provisions of this subsection by the storage reservoir described in such maps or data. Such notices shall contain a description of the boundaries of such storage reservoir. When a person operating a coal mine or owning an interest in coal properties which are or may be affected by the storage reservoir, requests in writing a copy of any map or data filed with the department such copy shall be furnished by the storage operator.

(b) Any person who, on the effective date of this article, is injecting gas into or storing gas in any other storage reservoir in this state not subject to subsection (a) of this section shall, on or before the first day of July, one thousand nine hundred eighty-three, file with the department a map in the same detail as the map required for a storage reservoir subject to subsection (a) of this section; and, if the initial injection of gas into the storage reservoir by such person or any predecessor occurred after the thirty-first day of December, one thousand nine hundred seventy, data in the same detail as the data required for a storage reservoir shall be filed subject to subsection (a) of this section: Provided, That in the case of a storage reservoir the operation of which has been certificated by the federal power commission or the federal energy regulatory commission under section seven of the federal Natural Gas Act, the person may, in lieu of the data, submit copies of the application and all amendments and supplements of record in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto.

Any person who, after the effective date of this article, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the department a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage: Provided, That in the case of a storage reservoir the operation of which will be re-
required to be certificated by the federal energy regulatory com-
mission, the person may, in lieu of the data, submit copies of
the application and all amendments and supplementals filed in
the federal docket, together with the certificate of public con-
venience and necessity and any amendments thereto, within
twenty days after the same have been filed by such person or
issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or
documents in lieu of data and filing of amended or supple-
mental maps or data or documents in lieu of data, or upon
receipt of an application filed with the federal energy regu-
atory commission for a new storage reservoir, the department
shall give notice of said filing by a Class II legal advertisement
in accordance with the provisions of article three, chapter
fifty-nine of this code, the publication area for which shall
be the county or counties in which the storage reservoir is
located. Such legal advertisements shall contain a description
of the boundaries of such storage reservoir. The storage
operator shall pay for the legal advertisement upon receipt
of the invoice therefor from the department. When any
person owning an interest in land which is or may be affected
by the storage reservoir requests in writing a copy of any
map or data or documents in lieu of data filed with the de-
partment, such copy shall be furnished by the storage operator.

(c) The department shall also intervene in the federal
docket, and participate in the proceedings for the purpose
of assuring that the certificate of public convenience and
necessity issued by the federal energy regulatory commission
does not authorize operations or practices in conflict with
the provisions of this article. The department may cooperate
with the public service commission if the commission also
intervenes. The attorney general is hereby directed to provide
legal representation to the department to achieve the purposes
of this subsection.

(d) For all purposes of this article, the outside boundaries
of a storage reservoir shall be defined by the location of those
wells around the periphery of the storage reservoir which had
no gas production when drilled in said storage stratum:
Provided, That the boundaries as thus defined shall be
originally fixed or subsequently changed where, based upon
the number and nature of such wells, upon the geological and
production knowledge of the storage stratum, its character,
permeability, and distribution, and operating experience, it is
determined in a conference or hearing under section ten of
this article that modification should be made.

CHAPTER 155
(S. B. 183—By Mr. Honkovich and Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-a, one-d, two and
nine, 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 twenty-two, all
relating to oil and gas wells; creation of and powers and
duties of the office of oil and gas and administration thereof;
increasing the fee for natural gas policy act certifications;
providing permit application fees and exception; providing
for appointment of oil and gas inspectors and supervising
inspector; providing for the qualifications, minimum
salaries, expenses reimbursable and removal of appointed
inspectors and supervising inspector; raising the bond for a
permit to drill, fracture or stimulate an oil or gas well and the
blanket bond to drill, fracture or stimulate a number of such
wells; increasing the required cash deposit to be deposited
with the administrator to permit release of the bond; raising
the bond requirement for plugging or abandoning a well or
plugging or abandoning a number of wells; providing for
reorganization of the office of oil and gas for proper and
effective administration and to enforce this article and
requiring the submission of reports of compliance with such
reorganization requirements and time therefor.

Be it enacted by the Legislature of West Virginia:

That sections one-a, one-d, two and nine, 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 four be further amended by adding thereto a new section, designated section twenty-two, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-la. Office of oil and gas—Purposes; rules; administration; appointments; powers and duties; public records.

§22-4-ld. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

§22-4-22. Reorganization; report required.

§22-4-1a. Office of oil and gas—Purposes; rules; administration; appointments; powers and duties; public records.

1 (a) There is hereby created, under the jurisdiction of the
director of the department of mines, an office of oil and gas
which shall have as its purpose the supervision of the
execution and enforcement of matters related to oil and gas
set out in this article and in articles five and seven of this
chapter.

7 (b) The office of oil and gas is authorized to enact rules
necessary to effectuate the above stated purposes.

9 (c) There shall be an employee of the office of oil and gas
whose title shall be “administrator of the office of oil and
gas” who shall be appointed by the director of the
department of mines to serve at the will and pleasure of the
director and whose salary shall be set by the director. The
administrator shall have full charge of the oil and gas
matters set out in this article and in articles five and seven
of this chapter, subject always to the direct supervision and
control of the director of the department of mines. As such
the administrator shall have the power and duty to:

19 (1) Supervise and direct the activities of the office of oil
and gas and see that the purposes set forth in subsections (a)
and (b) of this section are carried out;

22 (2) Employ a supervising oil and gas inspector and oil
and gas inspectors upon approval by the director;
(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the office of oil and gas, and fix their compensation;

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles five and seven of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report to the director of the department of mines in such form and detail as the director may from time to time request, so that the director can complete the preparation of the director's annual report to the governor of the state;

(10) Conduct such research and studies as the director shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the "Natural Gas Policy Act of 1978," which are to be performed by a designated state
jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said "Natural Gas Policy Act of 1978";

(12) Collect a filing and processing fee of forty dollars for each well, for which a determination of qualification to receive a maximum lawful price under the provisions of the "Natural Gas Policy Act of 1978" is sought from the administrator; all revenues from such fees to be placed in the general revenue fund of the state;

(13) Collect a permit fee of two hundred fifty dollars for each permit application filed after the effective date of this subdivision: Provided, That no permit application fee shall be required when an application is submitted solely for plugging or replugging of a well. All application fees required hereunder shall be in addition to any other fees required by the provisions of this article;

(14) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties assigned to him by the director of the department of mines.

(d) All records of the department shall be open to the public.

§22-4-1d. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless at the time of his probationary appointment he (1) is a citizen of West Virginia, in good health and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in the oil and gas industry, at least five years of which, immediately preceding his original appointment, shall have been in the oil and gas industry in this state: Provided, That a diploma in geology or in mining or petroleum engineering shall be considered the equivalent of five years' practical experience; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.
In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the administrator. No candidate's name may remain on the register for more than three years without requalifying.

The salary of the supervising inspector shall be not less than twenty-five thousand dollars per annum. Salaries of inspectors shall be not less than twenty thousand dollars per annum. The supervising inspector and inspectors shall receive mileage expense reimbursement at the rate established by rule of the commissioner of the department of finance and administration for in-state travel of public employees. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the administrator, subject to the approval of the director of the department of mines and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the administrator shall consider ability, performance of duty and experience. No reimbursement for traveling expenses may be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by the administrator or the director of the department of mines...
whenever either has reasonable grounds to believe and does
believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition,
filed with the oil and gas inspectors' examining board by
the administrator or the director, setting forth with
particularity the facts alleged. Not less than twenty
reputable citizens engaged in oil and gas drilling and
production operations in the state may petition the
administrator or the director of the department of mines for
the removal of an inspector or the supervising inspector. If
such petition is verified by at least one of the petitioners,
based on actual knowledge of the affiant, and alleges facts
which, if true, warrant the removal of the inspector or
supervising inspector, the administrator or the director of
the department of mines shall cause an investigation of the
facts to be made. If, after such investigation, the
administrator or the director finds that there is substantial
evidence which, if true, warrants removal of the inspector
or supervising inspector, he shall file a petition with the oil
and gas inspectors' examining board requesting removal of
the inspector or supervising inspector.

On receipt of a petition by the administrator or by the
director of the department of mines seeking removal of an
inspector or the supervising inspector, the oil and gas
inspectors' examining board shall promptly notify the
inspector or supervising inspector, as the case may be, to
appear before it at a time and place designated in said
notice, which time shall be not less than fifteen days nor
more than thirty days thereafter. There shall be attached to
the copy of the notice served upon the inspector or
supervising inspector a copy of the petition filed with such
board.

At the time and place designated in said notice, the oil and
gas inspectors' examining board shall hear all evidence
offered in support of the petition and on behalf of the
inspector or supervising inspector. Each witness shall be
sworn and a transcript shall be made of all evidence taken
and proceedings had at any such hearing. No continuance
may be granted except for good cause shown.

The chairman of the board, the administrator and the
director of the department of mines may administer oaths
and subpoena witnesses.
An inspector or supervising inspector who willfully refuses or fails to appear before such board, or having appeared, refuses to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which he may be asked to testify at such hearing before such board, forfeits his position.

If, after hearing, the oil and gas inspectors’ examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said coal seams beneath said
tract of land. With each of such plats there shall be enclosed
a notice (form for which shall be furnished on request by the
department of mines) addressed to the department of mines
and to each such coal operator, owner and lessee, if any, at
their respective addresses, informing them that such plat
and notice are being mailed to them respectively by
registered or certified mail, pursuant to the requirements of
this article. If no objections are made, or are found by the
department, to such proposed location or proposed
fracturing within fifteen days from receipt of such plat and
notice by the department of mines, the same shall be filed
and become a permanent record of such location or
fracturing subject to inspection at any time by any
interested person, and the department may forthwith issue
to the well operator a permit reciting the filing of such plat,
that no objections have been made by the coal operators,
owners and lessees, if any, or found thereto by the
department, and authorizing the well operator to drill at
such location, or to fracture the well. Unless the department
has objections to such proposed location or proposed
fracturing or stimulating, such permit may be issued prior
to the expiration of such fifteen-day period upon the
obtaining by the well operator of the consent in writing of
the coal operator or operators, owners and lessees, if any, to
whom copies of the plat and notice shall have been mailed
as herein required, and upon presentation of such written
consent to the department. The notice above provided for
may be given to the coal operator by delivering or mailing it
by registered or certified mail as above to any agent or
superintendent in actual charge of mines.

A permit to drill, or to fracture or stimulate an oil or gas
well, shall not be issued unless the application therefor is
accompanied by a bond of the operator in the sum of ten
thousand dollars, payable to the state of West Virginia, with
a corporate bonding or surety company authorized to do
business in this state as surety thereon, conditioned on full
compliance with all laws, rules and regulations relating to
the drilling, redrilling, deepening, casing, plugging,
abandonment and reclamation of wells and for furnishing
such reports and information as may be required by the
department: Provided, That when such operator makes or
has made application for permits to drill a number of wells
or fracture or stimulate a well or wells the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid: Provided, however, That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the administrator cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (4) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this state for the
109 acquisition, construction, improvement or extension of a
110 waterworks system, or a sewerage system, or a combined
111 waterworks and sewerage system, when such bonds are
112 payable from revenue or earnings specifically pledged for
113 the payment of principal and interest, and a lawful sinking
114 fund or reserve fund has been established and is being
115 maintained for the payment of such bonds; (6) revenue
116 bonds issued by a public service board of a public service
117 district in this state for the acquisition, construction,
118 improvement or extension of any public service properties,
119 or for the reimbursement or payment of the costs and
120 expenses of creating the district, when such bonds are
121 payable from revenue or earnings specifically pledged for
122 the payment of principal and interest, and a lawful sinking
123 fund or reserve fund has been established and is being
124 maintained for the payment of such bonds; (7) revenue
125 bonds issued by a board of trustees of a sanitary district in
126 this state for the corporate purposes of such district, when
127 such bonds are payable from revenue or earnings
128 specifically pledged for the payment of principal and
129 interest, and a lawful sinking fund or reserve fund has been
130 established and is being maintained for the payment of such
131 bonds; and (8) bonds issued by a federal land bank or home
132 owners’ loan corporation. The cash deposit or market value,
133 or both, of the collateral securities shall be equal to or
134 greater than the penalty of the separate or blanket bond, as
135 the case may be. Upon receipt of any such deposit or cash or
136 collateral securities, the administrator shall immediately
137 deliver the same to the treasurer of the state of West
138 Virginia. The treasurer shall determine whether any such
139 securities satisfy the requirements of this section. If the
140 securities are approved they shall be accepted by the
141 treasurer. If the securities are not approved, they shall be
142 rejected and returned to the operator and no permit shall be
143 issued until a corporate surety bond is filed or cash or
144 proper collateral securities are filed in lieu of such surety.
145 The treasurer shall hold any cash or securities in the name
146 of the state in trust for the purposes for which the deposit
147 was made. The operator shall be entitled to all interest and
148 income earned on the collateral securities filed by such
149 operator so long as the operator is in full compliance with
150 all laws, rules and regulations relating to the drilling,
151 redrilling, deepening, casing, plugging, abandonment and
reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the administrator, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, or other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas, or both, its operator may deposit with the administrator cash from the sale of the oil or gas, or both, until the total deposited is ten thousand dollars. When the sum of the cash deposited is ten thousand dollars, the separate bond for the well shall be released by the department. Upon receipt of such cash, the administrator shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as he has furnished all reports and information as may be required by the department. If the cash realized from the sale of oil or gas, or both, from the well is not sufficient for the operator to deposit with the administrator the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the department of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities, as provided in the next preceding paragraph of this section, with the department. If a new bond or collateral securities are furnished by the operator, the liability of the corporate bonding or surety
company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities, as provided in the next preceding paragraph of this section, with the department, he shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law, rules and regulations applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws, rules and regulations.

Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the administrator to the operator who deposited same.

If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the administrator have not been complied with within the time limit set by the violation notice as defined in sections one-g, one-h and one-i of this article, the performance bond shall then be forfeited.

When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto the administrator shall give notice to the attorney general who shall collect the forfeiture without delay.

All forfeitures shall be deposited in the treasury of the state of West Virginia in the special reclamation fund as defined in section twelve-a of this article.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in
accordance with the rules and regulations promulgated by the administrator.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section two of this article, and the coal operators to whom notices are required to be given by section two-a of this article, of its intention to plug and abandon any such well (using such form of notice as the department may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the department and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the department of mines and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the department, first obtain the verbal permission of the administrator or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.

No well may be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the department is furnished a bond of the operator in the sum of ten thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the casing,
OIL AND GAS

plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. When a number of wells are involved, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid. In lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the administrator cash or collateral securities as specified in section two of this article. All of the provisions of section two dealing with cash or collateral securities in lieu of corporate surety shall be fully applicable hereto except for the condition of the bond with respect to which the operator must be in full compliance in order to be entitled to the interest and income earned on such securities. The operator shall be entitled to such interest and income under this section so long as the operator is in full compliance with all laws, rules and regulations relating to the casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Notwithstanding the foregoing provisions, any operator who, in accordance with section two of this article, has furnished a separate bond, which has not been released by the department, for the drilling, converting or drilling for the introduction of liquids, for the disposal of sewage, industrial waste or other waste or the effluent therefrom, or introducing pressure, whether liquid or gas, or introducing liquid for the purposes provided for in section ten-a of this article or fracturing of the well that is now proposed to be plugged and abandoned, or who, in accordance with the provisions of said section two of this article, has furnished a blanket bond which has not been released by the department, shall not be required by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced persons who participated in the work, the administrator or his
designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-22. Reorganization; report required.

(a) The Legislature finds that the office of the administrator is, as of the first day of February, one thousand nine hundred eighty-three, inadequately organized, staffed, equipped and housed to perform the functions presently assigned to it and likely to be assigned to it.

(b) The director shall assure that the administrator effectively implements the provisions of this section.

(c) Within the appropriations and other funds lawfully available to the office, the administrator, under the supervision, direction and authority of the director, shall (1) promptly prepare a plan for the reorganization of the office that will ensure the efficient, fair, modern, prompt and effective administration and enforcement of the statutes now or hereafter committed to the office for execution, including adequate provision for personnel, equipment, training and working space, (2) consult with the civil service commission to design and implement a plan for the retention, attraction, training and appropriate compensation of qualified inspectors, including, if appropriate, separate classifications or steps for inspectors whose training, efficiency and experience may justify increased compensation, (3) design and implement a plan to reduce and ultimately eliminate any existing backlog of work in the approval of filings under the "Natural Gas Policy Act of 1978," the timely and effective processing of permits, applications, the conduct of inspections and enforcement activities, and all other duties assigned to the office by law or developed by departmental rule, (4) design and implement a plan for optimum utilization of personnel, increased use of modern communication and other administration and enforcement techniques, sufficient to assure maximum efficiency of the office within the means provided by appropriations or other funds, and (5) file with
the clerk of each house of the Legislature, for immediate
presentation to each house, a report of full compliance with
this section and any further recommendations of the
director or the administrator to assist in the proper
operation of the office, which report shall be approved by
the director and so filed on the first day of the regular
session of the Legislature to be held in the year one
thousand nine hundred eighty-four.

CHAPTER 156

(Com. Sub. for S. B. 450—By Mr. Nelson and Mr. Jones)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twenty-two of the
code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-p, relating to oil and gas wells; transmitting copies of permits to the assessor of the county in which the well is located.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1p. Copy of permits to county assessor.

1 Upon the issuance of any permit pursuant to the pro-
visions of this article, the deputy director shall transmit
2 a copy of such permit to the office of the assessor for the
3 county in which the well is located.
CHAPTER 157
(Com. Sub. for S. B. 558—By Mr. Nelson)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven-c, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-a, relating to petroleum products franchise agreements; permitting franchise dealer to designate certain successors to his interests in the franchise under certain conditions; defining certain terms; establishing the conditions under which such succession may occur; and permitting change of the designated successor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.

§47-11C-2. Definitions.


§47-11C-2. Definitions.

1 As used in this article:

2 (1) "Adult" means any person who is not a minor;

3 (2) "Dealer" means any person, other than an agent or employee of a producer, who is engaged in the retail sale of petroleum products under a franchise agreement as defined by this section;

4 (3) "Designated family member" means the adult spouse or the adult child or stepchild of the dealer or any other adult person related to the dealer by either the half or whole blood or the adult spouse of the other adult
person, who has experience in the service station business and who, in the case of the dealer's death or retirement, is designated in the franchise agreement for a service station as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession;

(4) "Franchise" or "franchise agreement" means a written agreement between a producer and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark or other identifying symbol or name owned by the producer, or a written agreement between a producer and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the producer, for the purpose of engaging in the retail sale of petroleum products of the producer;

(5) "Good cause" means failure of the dealer to make good faith effort to comply with any material requirement of a franchise agreement;

(6) "Producer" means every person who produces, refines, manufactures, processes or otherwise alters any motor fuel and other petroleum products for sale or use in this state; and

(7) "Service station" means any filling station, store, garage or other place of business in this state for the retail sale of motor fuel and other petroleum products.


(a) Effective the first day of July, one thousand nine hundred eighty-three, every franchise agreement entered into between a producer and dealer shall contain provisions which comply with this section.

(b) A dealer shall have the right, effective upon his death or retirement, to have his interests under a franchise agreement assigned to a designated family member who has been approved by the producer in accordance with the producer's reasonable standards for personal and financial condition unless the producer shows that the designated family member no longer meets the rea-
sonable standards set at the time of the previous approval. All franchise agreements shall contain a provision identifying the designated family member who is entitled to succeed to the interests of the dealer under the agreement upon his death or retirement. The foregoing shall not prohibit a producer from requiring as a condition to honoring the succession that the designated family member accept a trial franchise within thirty days of the dealer's death or retirement and that the designated family member attend a training program offered by the producer. As used herein, the term "trial franchise" shall have the same meaning as the same is defined in the federal petroleum marketing practices act (15 USC, paragraph 2801, et seq.).

(c) A dealer and producer may mutually agree to change the designated family member entitled to succeed to the dealer's interests under a franchise agreement. The designated family member shall provide, upon the request of the producer, personal and financial data that is reasonably necessary to determine whether the succession should be honored. The producer shall not be obligated to accept a designated family member under this subsection who does not meet the producer's reasonable standards, but any refusal to accept the designated family member as a successor dealer shall be given by the producer in writing to the dealer and shall fairly state the reason therefor.

CHAPTER 158
(S. B. 258—By Mr. Davis)

[Passed March 3, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, six, nine and fourteen, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred one, article three, chapter sixty-a of said code, all relating to
eliminating requirement that investigators appointed by the board of pharmacy be registered pharmacists; increasing and setting certain fees connected with the operation of the state board of pharmacy; setting certain other fees connected with the manufacture, distribution and dispensing of controlled substances; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter
30. Professions and Occupations.
60A. Uniform Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACIST AND DRUGSTORES.

§30-5-2. Board of pharmacy; appointment, qualifications and terms of members; powers and duties generally.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

§30-5-6. Registration of pharmacists from other states.

§30-5-9. Fees.

§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

§30-5-2. Board of pharmacy; appointment, qualifications and terms of members; powers and duties generally.

There shall be a state board of pharmacy, known as the "West Virginia board of pharmacy," which shall consist of five practicing pharmacists, who shall be appointed by the governor by and with the advice and consent of the Senate. Each member of the board, at the time of his appointment, shall be a citizen and registered pharmacist of this state, and actively engaged in the practice of pharmacy.

The members of the board in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. On or before the first day of July, one thousand nine hundred thirty-one, and
on or before the first day of July of each year thereafter, the governor shall appoint one member to serve for a term of five years, commencing on said first day of July, and any member shall be eligible for reappointment.

The board, in addition to the authority, powers and duties granted to the board by this chapter and chapter sixteen of the code, shall have the authority to: (a) Regulate the practice of the profession of pharmacy; (b) regulate the employment of apprentices and interns in pharmacy; (c) appoint, within the limit of appropriations, inspectors who shall be registered pharmacists, and investigators, both intended to act as agents of the board within the provisions of this chapter and chapter sixteen of the code and such rules and regulations as the board shall promulgate; and (d) adopt rules of professional conduct appropriate to the establishment and maintenance of high standards of integrity and dignity in a profession.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

In order to be registered as a pharmacist within the meaning of this article, a person shall be a citizen of the United States, not less than eighteen years of age, shall present to the board of pharmacy satisfactory evidence that he is a graduate of a recognized school of pharmacy as defined by the board of pharmacy. In addition thereto, he shall have had at least nine months of practical experience in a pharmacy or drugstore under the instruction and supervision of a registered pharmacist and shall pass satisfactorily an examination by or under the direction of the board of pharmacy: Provided, That any registered pharmacist who has renewed his registration as such assistant pharmacist for each consecutive year since his original registration with the state board of pharmacy, may upon application to the board of pharmacy, be registered as a pharmacist within the meaning of this article. An applicant for examination shall forward to the secretary a fee of one hundred twenty-five dollars with his application.

Every applicant for registration as a pharmacist shall present to the board of pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness or the use of controlled substances. The board
shall issue certificates of registration to all persons who successfully pass the required examination and are otherwise qualified and to all those whose certificates or licenses the board shall accept in lieu of an examination as provided in section six of this article.

§30-5-6. Registration of pharmacists from other states.

The board of pharmacy may register and admit to practice as pharmacists in this state, without examination, such persons as have been legally registered or licensed as pharmacists in other states: Provided, That the applicant for such registration shall appear personally before the board and shall present satisfactory evidence of qualification equal to that required of applicants for registration in this state, and that he was registered or licensed by examination in such other state, and that the standard of competence required in such other state is not lower than that required in this state: Provided, however, That the board is satisfied that such other state accords similar recognition to registered pharmacists of this state. Applicants for registration under this section shall, with their application, forward to the secretary of the board of pharmacy a fee of one hundred twenty-five dollars.

§30-5-9. Fees.

The board of pharmacy shall be entitled to charge and collect the following fees, in addition to those provided in article one of this chapter and in sections fourteen and sixteen of this article: For renewing the registration of a pharmacist, thirty dollars; to register an intern pharmacist, ten dollars; and to register a consultant pharmacist, twenty dollars.

§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

The board of pharmacy shall require and provide for the annual registration of every pharmacy or drugstore, as defined, doing business in this state. Any person, firm, corporation or partnership desiring to operate, maintain, open or establish a pharmacy or drugstore, as defined, in this state, shall apply to the board of pharmacy for a permit to do so. The application for such permit or license shall be
made on a form prescribed and furnished by the board of pharmacy, which when properly executed, shall indicate the owner, manager, trustee, lessee, receiver or other person or persons desiring such permit, as well as the location of such pharmacy or drugstore, including street and number, and such other information as the board of pharmacy may require. If it is desired to operate, maintain, open or establish more than one pharmacy or drugstore, separate application shall be made and separate permits or licenses shall be issued for each. Every initial application for a permit shall be accompanied by the required fee of one hundred fifty dollars. The fee for renewal of such permit or license shall be seventy-five dollars annually. If an application is found satisfactory, the secretary of the board of pharmacy shall issue to the applicant a permit or license for each pharmacy or drugstore for which application is made. Permits or licenses issued under this section shall not be transferable and shall expire on the thirtieth day of June of each calendar year, and if application for renewal of permit or license is not made or a new one granted on or before the first day of August, following, the old permit or license shall lapse and become null and void. Every such place of business so registered shall be in direct charge of a registered pharmacist and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a drugstore or pharmacy.

The provisions of this section shall have no application to the sale of patent or proprietary medicines which are not poisonous, deleterious or habit-forming, nor to such ordinary drugs in original retail packages when such are not poisonous, deleterious or habit-forming, nor to flavoring extracts or dyestuffs as are usually sold in a country store.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-301. Rules; fees.

1 The state board of pharmacy shall promulgate rules and charge fees relating to the registration and control of the manufacture and distribution of controlled substances
within this state, and each department, board or agency of
this state which licenses or registers practitioners
authorized to dispense any controlled substance shall
promulgate rules and charge fees relating to the
registration and control of the dispensing of controlled
substances within this state by those practitioners licensed
or registered by such department, board or agency.

The state board of pharmacy or the department, board or
agency shall collect the following annual registration fees
from persons who manufacture, distribute, dispense or
conduct research with controlled substances: For
registration of a manufacturer, fifty dollars; for
registration of a wholesaler, fifty dollars; for registration of
a retailer, fifteen dollars; for registration of a hospital or
clinic, fifteen dollars; and for registration of a research
institution, five dollars.

CHAPTER 159
(H. B. 1410—By Mr. Ashcraft and Mr. Manchin)

(Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section three, article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of physical therapists; and removing the restriction that physical therapists may only treat persons referred to them by a licensed physician or surgeon, dentist, osteopathic physician and surgeon, or chiropodist-podiatrist.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty, 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 20. PHYSICAL THERAPISTS.

§30-20-3. License required; exception; firms, associations and corporations engaging in the practice of physical therapy; unauthorized practice of physical therapy.

(a) No person shall engage in, offer to engage in or hold himself out to the public as being engaged in, the practice of physical therapy in this state unless he is a licensed physical therapist: Provided, That the foregoing prohibition shall not apply to the activities of a licensed physical therapy assistant performed in accordance with the definitional requirements of a physical therapy assistant as specified in subdivision (1), section two of this article. No person shall use in connection with his name the words "physical therapy technician," "registered physical therapist," "physical therapist," "licensed physical therapist" or "physical therapist" or use the initials "R.P.T.,” “P.T.T.,” “P.T.” or any other letters, words or insignia which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of physical therapy unless he is a licensed physical therapist. No person shall use in connection with his name the words "physical therapy assistant," "registered physical therapy assistant" or "licensed physical therapy assistant" or use the initials "P.T.A.,” “A.P.T.” or any other letters, words or insignia which induces or tends to induce the belief that such person is qualified to act or is acting as a physical therapy assistant unless he is a licensed physical therapy assistant. 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 physical therapy.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who practiced physical therapy in this state for five continuous years prior to July one, one thousand nine hundred sixty-three, and who was eligible to qualify for a license under the former provisions of this article by successful completion of a written examination provided by the board and who has not yet successfully completed such examination, may continue to practice physi-
cal therapy without a license or temporary permit issued under the provisions of this article, and notwithstanding that such person does not meet the educational requirement specified in subdivision (5), subsection (a), section six of this article, may continue to take such examination: Provided, That unless and until such person passes such examination, such person shall not use in connection with his name the words "physical therapy technician," "registered physical therapist," "physical therapist," "licensed physical therapist" or "physiotherapist" or use the initials "R.P.T.,” “P.T.T.,” “P.T.” or any other letters, words or insignia which induces or tends to induce the belief that such person is a licensed physical therapist.

(c) No person shall act, nor hold himself out as being able to act, as a physical therapy assistant unless he is a licensed physical therapy assistant.

(d) Nothing contained within this article shall prohibit any person licensed in this state under any other article of this code from engaging in the practice for which he is licensed.

(e) Nothing contained within this article shall be construed as authorizing a physical therapist, or physical therapy assistant, or any other person to practice medicine, surgery, osteopathy, homeopathy, chiropractics, naturopathy or any other form, branch or method of healing as authorized by the laws of the state of West Virginia.

(f) A licensed physical therapy assistant shall not practice physical therapy other than in accordance with the definitional requirements of a physical therapy assistant as specified in subdivision (i), section two of this article.

CHAPTER 160

(Com. Sub. for H. B. 1212—By Mr. Carmichael)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amend-
POLYGRAPH TESTS

ed, by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, relating to prohibiting employers from requiring, requesting or knowingly subjecting any employee or prospective employee to submit to a polygraph, lie detector or other such similar test using mechanical measures of physiological reactions to evaluate truthfulness; providing for exceptions for law-enforcement agencies and military forces of this state and for employers who manufacture, distribute or dispensed drugs; limitations upon the use of test results; providing for the licensing of polygraph examiners; establishing qualifications for polygraph examiners; requiring the commissioner of labor to promulgate rules governing polygraph tests; requiring the commissioner of labor to design and administer a test for licensing of examiners; establishing a licensing fee; providing for a penalty for violation of these sections; and providing for a cause of action and treble damages to an employee or prospective employee.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5a. Definitions.
§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.
§21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.
§21-5-5d. Penalties; cause of action.

§21-5-5a. Definitions.

1 As used in sections five-b, five-c and five-d of this article, unless the context clearly requires otherwise:

3 (1) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government; public benefit corporation, public authority or political subdivision of the state, or other business entity,
which employs or seeks to employ an individual or individuals. All provisions of sections five-b, five-c and five-d of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

(2) "Employee" means an individual employed by an employer.

(3) "Polygraph" means an instrument which records permanently and simultaneously a subject's cardiovascular and respiratory patterns and galvanic skin response as minimum standards: Provided, That such instrument may record other physiological changes pertinent to the detection of deception.

(4) "Prospective employee" means an individual seeking or being sought for employment with an employer.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

No employer may require or request either directly or indirectly, that any employee or prospective employee of such employer submit to a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any such examination or test administered outside this state to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this state: Provided, That the provisions of this section shall not apply to employees of an employer authorized to manufacture, distribute or dispense the drugs to which article five, chapter thirty applies, excluding ordinary drugs as defined in section twenty-one, article five, chapter thirty: Provided, however, That the provisions of this section shall not apply to law-enforcement agencies or to military forces of the state as defined by section one, article one, chapter fifteen of the code: Provided further, That the results of any such examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.
§21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.

(a) No person, firm or corporation shall administer a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness to an employee or prospective employee without holding a current valid license to do so as issued by the commissioner of labor. No test shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he:

(1) Is at least eighteen years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the commissioner of labor or under his supervision, to determine his competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the commissioner of labor in his sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The commissioner of labor may design and by procedural rule designate and thereafter administer any test he deems appropriate to those persons applying for a license to administer polygraph, lie detector or such similar test to employees or prospective employees. The test designed by the commissioner of labor shall be so designed as to ensure
that the applicant is thoroughly familiar with the code of ethics of the American polygraph association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating polygraph equipment.

(d) The license to give a polygraph, lie detector or similar test to employees or prospective employees shall be issued for a period of one year. It may be reissued from year to year.

(e) The commissioner of labor shall charge a fee of one hundred dollars for each issuance or reissuance of a license to give a polygraph, lie detector or similar test to employees or prospective employees. Such fee shall be deposited in the general revenue fund of the state.

(f) The commissioner of labor shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a, article three governing the administration of polygraph, lie detector or such similar test to employees. Such legislative rules shall include:

1. The type and amount of training or schooling necessary for a person before which he may be licensed to give or interpret such polygraph, lie detector or similar test;

2. Standards of accuracy which shall be met by machines or other devices to be used in polygraph, lie detector or similar tests; and

3. The conditions under which a polygraph, lie detector or such similar test may be given.

§ 21-5-5d. Penalties; cause of action.

(a) It shall be a misdemeanor to administer or interpret a polygraph, lie detector or similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness to an employee or prospective employee without having received a valid and current license to do so as issued by the commissioner of labor or in violation of any rule or regulation promulgated by the commissioner under section five-c of this article. Any person convicted of violating
section five-c shall be fined not more than five hundred dollars.

(b) Any employer who violates section five-b of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars.

(c) An employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.

CHAPTER 161

(Com. Sub. for H. B. 1269—By Mrs. Theiling and Mr. Givens)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preneed burial contracts; providing for a legislative declaration of policy and intent; providing for the definition of certain terms with respect thereto; requiring all persons selling preneed burial contracts to obtain certificates of authority so to do; the authority of the department of labor with respect thereto; requiring the payment of certain fees and establishing a special account into which such fees are to be paid; providing for the application for certificates of authority and the contents thereof; requiring the annual reports and the annual renewal for the certificates of authority; requiring all agents and employees who sell preneed burial contracts for a certificate holder to be licensed; providing for the disposition of all sums collected by a certificate holder pursuant to a pre-
need burial contract and requiring that a certain portion of such proceeds be held in trust; procedures for the administration of such trusts; requiring the department to promulgate rules and regulations; establishing procedures for the withdrawal of such funds from such trust accounts; permitting the cancellation of such contracts by the purchaser thereof and providing for the return of all funds placed in the trust account pursuant to such canceled contract; providing for the disposition of the income of such contracts; providing for the appointment, qualification and removal of the trustees; requiring such trustees to post bond and establishing the penal sum of such bonds; establishing the type of investments in which trust assets may be placed; allowing contract buyers to make the contract irrevocable in certain instances; providing for the form and content of all such contracts; requiring the department of labor to administer and enforce the provisions of this article and requiring such department to prepare and furnish all forms necessary to such administration and enforcement; limiting and restricting the rights of certificate holders and licensees to solicit the sale of any such contracts; establishing certain disciplinary proceedings to be conducted by such department and for the revocation of certification or licensure for certain violations of the provisions of this article; granting authority to the department to liquidate any holder of a certificate for certain violations of the provisions of this article or of the rules and regulations promulgated thereunder; providing for certain civil and criminal penalties for such violations; providing for civil action and injunctive proceedings in favor of any aggrieved consumer or contract purchaser and awarding attorney's fees and costs in certain cases with respect thereto; and providing for the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. PRENEED BURIAL CONTRACTS.

§47-14-1. Declaration of policy; legislative intent.
§47-14-2. Definitions.
§47-14-3 Certificate of authority required; fees to go to department of labor; special account established; duties of certificate holder.
§47-14-4. Agents and employees; licenses required; fee to go to department of labor.
§47-14-5. Disposition of proceeds; trusts; procedure for administration; department to promulgate rules and regulations.
§47-14-6. Withdrawal of funds.
§47-14-7. Income on trust accounts.
§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.
§47-14-10. Solicitation.
§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.
§47-14-12. Civil action; attorney's fees.
§47-14-13. Penalty.
§47-14-14. Severability.

§47-14-1. Declaration of policy; legislative intent.

1 It is contrary to public policy for any person to receive, hold, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for same are made either outright or on an installment basis, prior to the death of the person or persons so purchasing them, or for whom they are purchased, unless that person holds, controls or manages those funds subject to the limitations and regulations prescribed by this article.

10 It is the legislative intent that the provisions of this article shall be construed as a limitation upon the manner in which a person is permitted to accept funds in prepayment of funeral services to be performed in the future, or funeral or burial goods to be used in connection with the funeral or final disposition of human remains, so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent
that no person may offer, sell or negotiate for the sale of a 
preneed funeral service contract through anyone who is not 
licensed under this article.

§47-14-2. Definitions.

As used in this article, unless the context otherwise re-
quires:

1. “Burial goods” means all merchandise supplied in regard 
to burial, or entombment in a mausoleum or inurnment in a 
columbarium, but does not include those services actually 
performed by a cemetery acting only as such, or the sale by 
any person of cemetery lots, land or interest therein, services 
incidental thereto, or the sale by any person of markers, me-
morials, monuments, equipment, crypts, urns, burial vaults or 
vaults constructed or to be constructed in a mausoleum or 
columbarium.

2. “Contract beneficiary” means any person specified or 
implied in a preneed funeral contract, upon whose death fun-
ereral services, funeral goods or burial goods shall be performed, 
provided or delivered.

3. “Contract buyer” means any person, whether or not a 
contract beneficiary, who purchases goods or services pursuant 
to a preneed funeral contract but shall not include any person 
other than a natural person.

4. “Contract seller” or “seller” means a person, his agent 
or his employee, who sells, makes available or provides pre-
need funeral contracts.

5. “Department” means the state department of labor.

6. “Funds” means moneys or other consideration received 
pursuant to the sale of a preneed funeral contract, including 
interest accrued or earned thereon.

7. “Funeral goods” means those items of merchandise sold 
or offered for sale directly to the public by any person which 
will be used in connection with a funeral or alternative for final 
disposition of human remains, but does not include those ser-
VICES actually performed by a cemetery acting only as such, or 
the sale by the cemetery of cemetery lots, land or interest there-
in, services incidental thereto, or the sale by any person of
markers, memorials, monuments, equipment, crypts, urns,
burial vaults or vaults constructed or to be constructed in a
mausoleum or columbarium.

(8) "Funeral services" means those services usually perform-
ed by a funeral service licensee, including, but not limited to,
care and preparation of human remains and coordinating rites
and ceremonies in connection with the disposition of human
remains carried out at the request of any individual responsible
for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm,
association or corporation, including any agent or employee
thereof residing in or doing business in this state who is en-
gaged in the selling of, making available of or providing of
"preneed funeral contracts," defined herein, or is the recipient
of funds paid for such purpose.

(10) "Person who makes a preneed funeral contract avail-
able" means a person who, while not directly selling the con-
tents of a preneed funeral contract to the public through his
efforts, makes such contracts available to the public but shall
not include manufacturers of funeral goods or burial goods.

(11) "Personal residence" means any residential building in
which one temporarily or permanently maintains his abode in-
cluding, but not limited to, hotels, motels, apartments, nursing
homes, convalescent homes, homes for the aged and public
and private institutions.

(12) "Preneed funeral contract" means any contract, agree-
ment, mutual understanding, series or combination of con-
tracts, agreements and mutual understandings, other than a
contract of insurance, under which, for a specified consider-
ation paid in advance of death in a lump sum or by install-
ments, a person promises to furnish or make available or pro-
vide funeral services, funeral goods or burial goods for use at
a time determinable by the death of the "contract beneficiary"
who is either named or implied.

(13) "Provider" means a person who, though not a party
to a preneed funeral contract does, through his efforts, make
the services or goods referred to in such a contract available to the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership or corporation, including any bank, trust company, savings and loan association or credit union, which receives money pursuant to any agreement or contract made pursuant to the provisions of this article.

§47-14-3. Certificate of authority required; fees to go to department of labor; special account established; duties of certificate holder.

(a) No person may receive, hold, control or manage any funds or other thing of value tendered as payment on any preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the department: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this state or insured by an agency of the United States federal government is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the department.

(c) Any person desiring to obtain a certificate of authority shall file with the department, upon forms provided by the department, a completed application, together with a one hundred dollar application fee for his original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the department may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to deal in preneed funeral contracts; and
The types of preneed funeral contracts proposed to be written or otherwise dealt in and copies of any writings used pursuant thereto; and if a person is a party to or bound by any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be two hundred dollars, payable to the “Preneed Burial Contract Regulation Fund” established by this section.

(e) Each certificate of authority holder shall file with the department an annual report with its request for renewal which shall contain the following:

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the beneficiary, the amount paid on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The name of the contract seller and the name of the provider of services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(3) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust requirements of this article and of the present depository or holder of such funds and a statement of the amounts thereof itemized as to each such contract.

(4) Any changes or amendments in any contracts or obligations of the seller and provider that occurred since the date of the last report.

(5) Such other information as may be considered neces-
sary by the department in order to meet its responsibilities under this article.

This annual report shall be required of any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public.

(f) An original certificate of authority expires on the thirty-first day of December following its issuance.

(g) Every application, request for renewal and statement filed with either of the foregoing shall be sworn by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn by each member thereof. If the certificate holder is a corporation, it shall be sworn by the president and secretary thereof.

(h) Upon the department's being satisfied that the statement and matters which may accompany it meet the requirements of this article and of its rules and regulations and, if by investigation by the department of the principals, including directors, officers, stockholders, employees and agents of such person, nothing is found to warrant denial of the certificate, the department shall issue to such person the certificate of authority or renewal thereof.

(i) (1) The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts, dates and amounts of payments made and accepted thereon, the name and address of each contract buyer, the name of the beneficiary as to each contract, the name of the trustee holding trust funds received under each contract and such other records as the department may require to enable it to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept until twelve months after termination of the applicable preneed contract.

(2) The certificate holder shall make all books and records pertaining to preneed funeral contracts available to the department for examination. The department may not more frequently than once in any calendar year, unless pursuant to an order of court for good cause shown, during ordinary business
hours, cause to be examined the books, records and accounts of the certificate holder with respect to funds received by said certificate holder and for that purpose may require the attendance of and examine, under oath, all persons whose testimony he may require.

(3) The certificate holder shall pay for the cost of any examination which is not the first one in that calendar year, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept and all other expenses necessarily incurred in the examination. The department shall assess and collect a fee for each such examination, based on the certificate holder's total outstanding preneed funeral service contracts and the cost of such examination, but the cost to the person being audited shall not be more than a total cost of five hundred dollars for each such examination. This fee shall be payable to the "Preneed Burial Contract Regulation Fund" established in this section.

§47-14-4. Agents and employees; licenses required; fee to go to department of labor.

No agent or employee of a contract seller may sell preneed funeral contracts in this state without first obtaining from the department a license for such purpose. The fee for such license and the annual renewal thereof shall be twenty-five dollars. These fees shall be payable to the "Preneed Burial Contract Regulation Fund" established by section three of this article. The commissioner shall not issue such license without requiring an applicant for the license, or if the applicant is a corporation, its individual agents, to provide proof to warrant its issuance by presenting with the application affidavits from his employer stating that, to the employer's best information, knowledge and belief the applicant merits a license. The acts of the agent shall be considered acts of the employer. The department may require the applicant to pass a written examination to ascertain if the applicant has sufficient knowledge of the industry and the provisions of this article to properly carry on the business covered by this article.
§47-14-5. Disposition of proceeds; trusts; procedure for administration; department to promulgate rules and regulations.

(a) All sums paid or collected on such contracts entered into after the effective date of this article shall be handled in the following manner:

(1) The contract seller or other person collecting the funds may retain for his own use and benefits and for the purpose of covering his selling expenses, servicing costs and general overhead, an amount not to exceed ten percent of the total amount agreed to be paid by the contract buyer as reflected in the preneed funeral contract. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;

(2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision (1) of this subsection, shall be deposited under the provisions of subdivision (3) hereof;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person from a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state (i) in the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state, or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder, be placed in a common or commingled trust fund in this state under a single trust instrument.

(c) All deposits shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract, to whom the contract buyer makes payment. Records shall be maintained
as to each contract showing the amount paid, the amount de-
posed and the amount invested with respect to any particular
buyer's contract.

(d) All funds required to be deposited and covered by this
article shall remain in this state.

(e) All accounts of money deposited in any bank, savings
institution, building and loan association or credit union in
accordance with the provisions of this article are subject to
periodic examination by the department of banking of this
state.

(f) The department shall promulgate rules and regulations
in accordance with chapter twenty-nine-a of this code for the
purpose of administering the provisions of this article: Pro-
vided, That the department shall, by such rules and regula-
tions, require the contract seller to secure a fidelity bond of
sufficient surety to guarantee that a contract purchaser who
cancels a contract under the provisions of this article receives
all of the moneys paid into any trust account.

§47-14-6. Withdrawal of funds.

(a) Disbursements of funds discharging any preneed funeral
contract shall be made by the trustee to the person named
in the contract upon receipt of a certified photostatic copy
of the death certificate of the contract beneficiary and evidence
satisfactory to the trustee that the preneed funeral service
or preneed burial supply contract has been fully performed.
In the event that, after the death of the contract beneficiary,
the contract services or goods are not provided because they
are not desired by the heirs or by the personal representative
of the contract beneficiary, the trustee shall have authority
to expend one hundred percent of the amount placed in the
trust account and paid on the contract, in any general locality
within or outside of this state, which shall be the burial location
of the contract beneficiary. If the service and goods are not
provided upon the death of the contract beneficiary because
of actions of the seller, provider or person making the preneed
funeral contract available, then all of the funds held on
deposit shall in ten days be refunded to the contract buyer
or his legal representative who also has available any other remedy set forth in this article.

(b) Any contract buyer or legally authorized person, acting in his behalf, may cancel a preneed funeral contract prior to the death of the contract beneficiary by notifying in writing the contract seller or present obligor of the provisions thereof, if a different person, of such desire to cancel. The seller or obligor shall, in ten days after receipt of such notice, notify the trustee of such cancellation and the trustee shall within thirty days after receipt of written notification pay to the contract buyer, or his legal representative, all funds placed in the trust account and paid on the contract.

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.

(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

(e) Payment by any depository or any trustee made in good faith pursuant to the terms of this section shall forever relieve such depository or trustee, as such, for any further liability for such funds under the contract and in law.

§ 47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund as permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit shall accrue to the individual account until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.

(b) Upon the death of such contract beneficiary, the total
amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost: Provided, That, to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the heirs or personal representative of the contract beneficiary;

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the rules and regulations of the department.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract and to disburse the trust proceeds as provided in subsection (b) of this section.

§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the preneed funeral contract available may not enforce a preneed funeral contract made in violation of this article, but a contract buyer or his heirs or legal representative may recover all amounts paid under his contract and all accrued income on such amount where the contract seller, provider or person
making the preneed funeral contract available has violated the provisions of this article as to such contract. The right of such recovery is in addition to the remedy provided for in section twelve of this article.

(b) A contract seller, provider or person making the preneed funeral contract available may appoint a board of at least three individual trustees under a trust instrument, if the trustee is other than a chartered state or national bank or trust company under the supervision of the department of banking of this state, to serve as trustees of its trust funds. Each individual trustee shall be a resident of this state and shall hold office subject to the direction of the seller. Not more than one member of the board of trustees of a trust fund may have a proprietary interest in the seller appointing trustees or in any certificate of authority holder who is placing funds in such trust.

Individual trustees of a trust fund shall file a fidelity bond with a corporate surety thereon which is licensed to do business in this state with the department of labor in an amount equal to the funds in trust, guaranteeing payment of damages occasioned by breach of the trustees' fiduciary duties. The trustees of one or more trust funds need file only one such bond. The aggregate liability of the surety shall in no case exceed the face amount of the bond. The department of labor or any aggrieved person claiming against any bond required by this section may maintain an action against the trustee and the surety. Individual trustees shall take no action respecting trust funds unless there is on file with the department a bond as required by this section. If the trustees are individuals, the commissioner may suspend the certificate of authority of any contract seller, provider or person making the preneed funeral contract available having trust funds with respect to which there is no bond on file with the department as required by this section.

(c) All trustees under the terms of this article are subject to the following investment standards: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, trustees have the responsibilities which customarily attach to such offices and to the type of estates entrusted to their care and shall exercise the judgment
and care under the circumstances then prevailing which men
of prudence, discretion and intelligence exercise in the man-
agement of their own affairs, not in regard to speculation but
in regard to the permanent disposition of their funds, consider-
ing the probable income as well as the probable safety of their
capital.

(d) No preneed funeral contract may restrict any contract
buyer who, for the purpose of receiving public assistance, may
make his or her contract irrevocable in accordance with the
laws and regulations of this state.

(e) All preneed funeral contracts must be in writing and
no contract form may be used without prior approval of the
department.

(f) Each contract buyer shall pay a fee of five dollars to the
contract seller, who in turn will forward such sum to the de-
partment within ten days after execution of the preneed funer-
al contract. The contract shall be recorded in the department.
Within ten days after receiving the fee, the department will
notify the contract purchaser, by mail, of the recording. The
fees shall be placed by the department in an account under the
department's control entitled "Preneed Guarantee Fund," and
the income thereon shall accrue to the fund. The department
may use such income, if necessary in its discretion, to enforce
this article.

In the event any buyer of any preneed funeral contract is
unable to receive the benefits of his contract, or to receive the
funds due by reason of his cancellation thereof, such buyer
may apply to the department on a form supplied by the de-
partment. Upon the finding of the department that said bene-
fits or return of payment is not available to the buyer, the de-
partment will cause to be paid to the said buyer from the
"Preneed Guarantee Fund" the amount actually paid by the
buyer under his or her contract. If the seller's liability for de-
fault is subsequently proven, any award made by a court of
law shall be made payable to the "Preneed Burial Contract
Regulation Fund" established in section three of this article.

(g) Notwithstanding the provisions of subsection (f), sec-
tion five of this article, delivery of funeral or burial goods
prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series of contracts.

(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral contract available to other persons within or without this state. The funds on deposit for the contract on any future payments, if any, by the contract buyer shall then be transferred to and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, for any further liability under such contract.

Nothing in this article or in any preneed contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifically provided herein and except that if the assignee is a resident of this state or the contract is to be fulfilled by the assignee in this state, the assignee must hold a certificate of authority under this article. If the contract is to be fulfilled in another state, the assignee must in all respects be in compliance with the preneed funeral law of that state, if any.

(i) Notwithstanding any other law of this state, a contract seller, provider or person making the preneed funeral contract available may, if requested by the contract buyer where the contract is to be paid in installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of the total cost of the insurance.

(j) In the event any certificate of authority holder or any-
one in violation of the article who has outstanding preneed
funeral contracts and is not the current holder of a certificate
of authority sells its business, through the sale of assets or
stock, which is involved in the fulfillment of obligations under
preneed funeral contracts, the buyer of such business is a
"successor in interest" and is covered not only by this article
but shall assume the obligations of seller under seller's out-
standing preneed funeral contracts regardless of whether seller
made known to buyer the existence of such contract or con-
tracts.


1 The administration and enforcement of the provisions of this
2 article are vested in the department. The department shall
3 prepare and furnish all forms necessary under this article, in-
4 cluding forms for applications for certificates of authority,
5 for renewals thereof, for annual statements, for other required
6 reports and for preneed funeral contracts. The department shall
7 promulgate, in accordance with the provisions of chapter
8 twenty-nine-a of this code, such rules and regulations as may
9 be necessary to effectuate the purpose of this article.

§47-14-10. Solicitation.

1 (a) Any contract seller or agent or employee or person act-
2 ing in behalf of any such person may not:
3
4 (1) Directly or indirectly call upon individuals or persons
5 in hospitals, rest homes, nursing homes or similar institutions
6 for the purpose of soliciting preneed funeral contracts or mak-
7 ing funeral or final disposition arrangements without first hav-
8 ing been specifically requested by such person to do so;
9
10 (2) Directly or indirectly employ any agent, assistant, em-
11 ployee, independent contracting person or any other person to
call upon individuals or persons in hospitals, rest homes, nurs-
12 ing homes or similar institutions for the purpose of soliciting
13 preneed funeral contracts or making funeral or final disposition
14 arrangements without first having been specifically requested
15 by such person to do so;
16
17 (3) Solicit relatives of persons whose death is apparently
18 pending or whose death has recently occurred for the purpose
of providing funeral services, final disposition, burial or funeral goods for such person;

(4) Solicit or accept or pay any consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons, or the services of a specific crematory, mausoleum or cemetery except where such arrangement is the subject of a preneed funeral contract;

(5) Solicit by telephone call or by visit to a personal residence, unless such solicitation has been previously requested by the person solicited or by a family member residing at such residence.

(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(c) Nothing herein shall be construed to prohibit general advertising.

(d) Anyone making a personal or written solicitation for a preneed funeral contract shall, at the very first instance, divulge the real reason for the contract or solicitation.

(e) The department may adopt rules regulating the solicitation of preneed contracts by certificate holders or registrants to protect the public from solicitation practices which utilize undue influence or which take undue advantage of a person's ignorance or emotional vulnerability.

§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.

(a) The following acts constitute grounds for which the disciplinary actions in subsection (b) may be taken against any person holding a certificate of authority or license pursuant to this article:

(1) Violating any provisions of this article;
(2) Attempting to procure or procuring a certificate of authority or license under this article by bribery or fraudulent misrepresentation;

(3) Having had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

(4) Being convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

(5) Making or filing a report required by this article which the certificate holder knows to be false or knowingly failing to make or file a report required by this article;

(6) Advertising goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

(7) Engaging in fraud, deceit or misrepresentation in the conduct of business of the certificate holder;

(8) Failing to comply with a lawful order of the department;

(9) Knowingly making any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;

(10) Not maintaining the funds received under the contracts as required by this article;

(11) Failing to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Failing to renew or qualify for renewal of its certificate of authority or license;

(13) Failing to produce records in connection with the certificate holder's business or has otherwise failed to comply with the provisions of this article or any rule promulgated by the department pursuant to this article; or

(14) Soliciting by the certificate holder, its agents, em-
employes or representatives through the use of fraud, undue in-
fluence, misrepresentation or overreaching or other forms of 
vexatious conduct as defined by law, this article or the rules 
and regulations of the department as to preneed funeral con-
tracts.

(b) Upon the violation of any of the provisions of this 
article, determined in an administrative hearing after notice and 
an opportunity to be heard, the department may institute revo-
cation proceedings regarding a license to operate a funeral 
home or a certificate of authority to sell preneed funeral con-
tracts, or both the license and the certificate of authority or 
file a complaint in a court of competent jurisdiction setting 
forth the relevant facts and praying for the issuance of an 
order to show cause why the license to operate a funeral home 
or the certificate of authority to sell preneed funeral contracts, 
or both the license and the certificate should not be revoked.

(1) Upon application for such rule to show cause, the court 
may, in its discretion, issue an injunction restraining the de-
fendant from transacting further business until further order 
of the court.

(2) Upon return of such order to show cause, the court shall 
hear and try the issue forthwith. If the court determines that 
the person so charged as defendant in such proceeding has not 
been guilty of the omission, failure or violation alleged in the 
complaint by the department, the court shall dismiss such com-
plaint. If the court finds that the charges of the department are 
supported by the evidence, it may enter an order directing the 
revocation of a license to operate a funeral home or of a certi-
ficate of authority to sell preneed funeral contracts, or the re-
vocation of both the license and the certificate of authority.

(3) In any such order of liquidation or in any order or 
orders thereafter entered, the court shall provide a notice to 
creditors, filing of claims and all other details necessary and 
esential to an estate in receivership.

(c) When the department finds any certificate holder or 
licensee guilty of any of the acts set forth in subsection (a) of 
this section after an administrative hearing, or finds that any 
funeral services or funeral or burial goods are offered for sale
when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed one thousand dollars for each county where there are separate violations;

(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and subject to such conditions as the department may specify.

d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article.

e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.

§47-14-12. Civil action; attorney's fees.

(a) The failure of a certificate holder or licensee to comply with the provisions of this article gives rise to a civil cause of action in favor of any aggrieved consumer or contract purchaser. Upon entry of a judgment for damages in favor of the plaintiff, the trial court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(b) The prevailing party, after judgment in trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.
(c) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings and appeals to the trial judge who presided over the civil case.

(d) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(e) Any award of attorney's fees or costs shall become part of the judgment and subject to execution as the law allows.

§47-14-13. Penalty.

Any person who receives, holds, manages or controls any funds or proceeds realized from the writing and issuing of a preneed funeral contract or disburses such funds or proceeds in any manner other than as authorized or required by this article or who has violated any of the provisions of this article or the rules and regulations promulgated hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars for each occurrence, or imprisoned in the county jail for a term not to exceed one year or both fined and imprisoned.

§47-14-14. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

CHAPTER 162
(S. B. 130—By Mr. Craigo)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article three, chapter twelve of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to appropriations, expenditures and deductions; and providing that a state employee or officer may authorize that a voluntary deduction from his net wages be made for supplemental health and life insurance premiums, subject to prior approval by the auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

1 Any officer or employee of the state of West Virginia may authorize that a voluntary deduction from his net wages be made for the payment of membership dues or fees to an employee association. Voluntary deductions may also be authorized by an officer or employee for any supplemental health and life insurance premium, subject to prior approval by the auditor. Such deductions shall be authorized on a form provided by the auditor of the state of West Virginia and shall state (a) the identity of the employee; (b) the amount and frequency of such deductions; and (c) the identity and address of the association or insurance company to which such dues shall be paid. Upon execution of such authorization and its receipt by the office of the auditor, such deductions shall be made in the manner specified on the form and remitted to the designated association or insurance company on the tenth day of each month: Provided, That such deductions shall not be made more frequently than once monthly. Deduction authorizations may be revoked at any time thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the state auditor: Provided, however, That nothing in this section shall interfere with or remove
any existing arrangement for dues deduction between an employer of any political subdivision of the state and its employees.

CHAPTER 163
(H. B. 1315—By Mr. Steptoe)

(Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.)

AN ACT to amend and reenact sections two, seven, fifteen and seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-one by adding thereto three new sections, designated sections fourteen-a, fourteen-b and twenty-two, relating to public legal services generally; defining eligible proceedings; defining criminal charge; the powers and limitations of the West Virginia public legal services council; permitting the auditing and accounting division to require reports on nonbillable time; authorizing the auditing and accounting division to require increased itemization on vouchers; providing for the budget of the appellate division to be within the appropriations of the council or as provided by law; providing for supplemental grants; specifying that loans under this article are considered advancements only; limiting the use of funds; apportioning cost of representation; authorizing repayment of cost of representation; and prohibiting certain public defender corporations from being activated before the first day of April, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

That sections two, seven, fifteen and seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article twenty-one be further amended by adding thereto three new sections, designated sections fourteen-a, fourteen-b and twenty-two, all to read as follows:
ARTICLE 21. PUBLIC LEGAL SERVICES.


§29-21-14a. Supplemental grants.


§29-21-15. Limitation on use of funds; exceptions.

§29-21-17. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

§29-21-22. Restriction on activation of corporations.


1. As used in this article:

2. (1) "Council" or "legal services council" means the West Virginia public legal services council established under this article;

3. (2) "Eligible client" means any person who is the subject of a serious criminal charge, has been convicted of such charge, 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;

4. (3) "Eligible proceeding" means any of the following proceedings or charges: Serious criminal charges, juvenile proceedings, contempts of court, child abuse and neglect proceedings, mental hygiene commitment proceedings, paternity proceedings, or any post conviction, extraordinary remedy or other appellate proceeding arising out of an eligible proceeding or any other type of proceeding in which the West Virginia state supreme court of appeals or the United States supreme court has specifically held an indigent person is constitutionally entitled to legal representation;

5. (4) "Legal representation" or "legal assistance" means the provision of any legal services consistent with the purposes and provisions of this article;

6. (5) "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;
(6) "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 attorney should be employed on a full-time basis, and the council approves such part-time employment;

(7) "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;

(8) "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; and

(9) "Serious criminal charge" 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 or the probable substantial impact of an adverse judgment or fine, or both, 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 jail or penal institution.


(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 council. 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
Upon the request of the executive director, the accounting and auditing division shall require each public defender corporation to annually report on nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities. Results of such studies shall be included by the council in the annual report required in subsection (c), section nineteen of this article.

Notwithstanding any provision of law to the contrary, upon the request of the executive director, the accounting and auditing division shall require vouchers for work thereafter performed pursuant to the provisions of this article to be itemized to some lesser fraction of an hour other than to the nearest quarter-hour.

(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 council. Within the appropriations to the council, the appellate division shall have its own budget as determined to be appropriate by the council or as provided by law and shall maintain vouchers and records for representation of eligible clients, for record purposes only.

§29-21-14a. Supplemental grants.

(a) A public defender corporation may make application to the council for a supplemental grant at any time during any fiscal year that it appears from actual experience that the grants earned or to be earned by the corporation pur-
suant to section fourteen of this article less all credits against loans will be insufficient to permit operation of the public defender corporation at the level deemed at the time of the application to be sufficient to enable the corporation to provide the services required of such corporation by law. The application for such supplemental grant shall clearly identify (1) any proposed change in the level of operations of the corporation from that projected in the current program application, (2) the costs or savings expected to result from such change, and (3) the change, if any, in the earning of grants expected to be caused by reason of such change. The supplemental grant application shall also identify any anticipated deficit expected by reason of any matter other than a change in the level of operations and identify and evaluate the causes therefor.

(b) Upon receipt by the council of any application for a supplemental grant, the executive director shall expeditiously evaluate the application and report his findings and recommendations to the council. He may require of the applicant corporation such reasonable additional information as he may deem appropriate. After consideration of the application, the council may:

(1) Refuse such application,

(2) Reduce the rate at which grants earned are credited to outstanding loans of the corporation, within the limits of available appropriations and the projected obligations of the council,

(3) Allow all or part of the supplemental grant, with or without reduction of credits to loans,

(4) Make such recommendations to the corporation for reduction of costs or increased earnings as he may deem appropriate.

The auditor shall honor the requisition of the executive director for such supplemental grants, from then current appropriations to the council, which shall be paid at such times and in such installments as the executive director shall specify.

(c) The council shall include in the annual report required in subsection (c), section nineteen of this article, a detailed re-
port of the supplemental grants made under this section and its evaluation of the causes therefor.

(d) Supplemental grants shall be accumulated from year to year. In the event all equipment and operational loans are paid by a corporation, grants earned by the corporation shall be credited against such supplemental grants at a rate specified by the executive director not in excess of the rate for credit against loans. The unpaid balances due on supplemental grants shall be listed in the annual report required by subsection (c), section nineteen of this article, together with the executive director's evaluation of the causes therefor.


Loans made under the provisions of this article are in the nature of advancements, designed primarily to measure the efficiency, in economic terms, of publicly employed legal counsel. Accordingly, such advancements constitute expenditures of the council in the fiscal year transferred to the public defender corporation. There is not and shall not be any obligation imposed upon such corporations or their directors, either officially or individually, to actually repay such advancements. Such advancements are to be reduced solely by the application of credits on grants earned, as provided in this article.

§29-21-15. Limitation on use of funds; exceptions.

(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 criminal charges, except that funds may be used for representation of indigent persons in the following proceedings:

(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 criminal charges, juvenile proceedings or mental hygiene proceedings or for which legal representation is otherwise afforded by this article;
§29-21-15. Prohibition actions brought for the purpose of challenging the excessive exercise of authority in a criminal, juvenile, or commitment proceeding for which legal representation is afforded by this article;

§29-21-16. Mandamus actions brought for the purpose of commanding action applicable to proceedings covered by this article;

§29-21-17. Extradition proceedings;

§29-21-18. Representation of persons who risk incrimination by testifying as material witnesses in criminal proceedings; and

§29-21-19. Proceedings under article seven, chapter forty-eight of this code in which the issue of paternity is to be determined.

(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.

§29-21-17. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The council shall establish, in consultation with the 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 circuit judge shall consider other relevant factors before determining whether a person is eligible to receive legal representation under the provisions of this article. Taking into account all pertinent factors and being satisfied that no undue hardship will be created, circuit judges may order that the total cost of providing representation under this article shall be
apportioned between the state and the eligible client. A person whose income exceeds the maximum annual income level for eligible clients may still receive all or part of the necessary legal representation if the court finds 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 appoint-
ment 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) In the circumstances and manner set forth below, circuit judges may order repayment to the state of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person to pay as costs the compensation of appointed counsel, the expenses of the defense and such other fees and costs as authorized by statute.

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment should the person's financial circumstances change.

(3) When a person is sentenced to repay costs, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future.

(4) A person who has been sentenced to repay costs, and who is not in contumacious default in the payment thereof,
may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person’s immediate family, the court may modify the method or amount of payment.

(5) When a person sentenced to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(e) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected under this section’s provisions and shall, quarterly, pay the moneys to the state auditor.

(f) 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.

§29-21-22. Restriction on activation of corporations.

Notwithstanding any other provision of law to the contrary, no public defender office created by section nine of this article, other than those corporations designated and activated by subsection (b) of said section nine, shall be activated so as to transact any business or exercise its power under this article before the first day of April, one thousand nine hundred eighty-three.
hundred thirty-one, as amended, relating to the public service commission; exempting from jurisdiction of the commission natural gas producers who provide natural gas service to not more than twenty-five residential customers; and providing for the commission to regulate such producers in certain cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; and any other public service: Provided, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provision of such residential service: Provided, however, That
upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: Provided further, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: And provided further, That the decision making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial.

The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction.

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.
AN ACT to amend and reenact sections one and four, article six-a, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor carrier registration generally; registration of motor carriers with the public service commission of the motor vehicles used by such carriers and the identification of such vehicles; requiring the designation of a local agent for the purpose of service of process; changing the dates required for the application for and the issuance of stamps used for the registration and identification of such motor vehicles and the date for applying for the form used for such purposes; and changing the date which such identification and registration expire.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-1. Filing of interstate commerce commission authority required; exception.


§24A-6A-1. Filing of interstate commerce commission authority required; exception.

1. No motor carrier shall operate within the borders of this state under authority issued by the interstate commerce commission (hereinafter referred to as I.C.C.) unless and until it shall have filed with this commission a copy of such authority. However, a motor carrier shall only be required to file with this commission that portion of its authority permitting operation within the borders of this state. A motor carrier shall not be required to file with this commission an emergency...
or temporary operating authority having a duration of thirty consecutive days or less if such carrier has: (a) Registered its other authority and identified its vehicles or driveaway operation under the provisions of this chapter, and (b) furnished to this commission a telegram or other written communication describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of this chapter. Each motor carrier shall file with the commission its designation of a local agent for service of process on the uniform application for registration of interstate operating authority as promulgated by the I.C.C.; except that such form need not be filed if the designation has been filed with the commission pursuant to 49 U.S.C., Section 10330(b).


(a) On or before the thirty-first day of December of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the commission for the issuance of an identification stamp or stamps for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of this state during the ensuing year. Such motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefore arises or is anticipated.

(b) If the commission determines that the motor carrier has complied with all applicable provisions of this chapter, the commission shall issue to the motor carrier the number of identification stamps requested.

(c) An identification stamp issued under the provisions of this article shall be used for the purpose of registering and identifying a vehicle or driveaway operation as being operated or conducted by a motor carrier under authority issued by the I.C.C., and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the pro-
visions of this article shall not knowingly permit the use of same by any other person or organization.

(d) The commission shall require the motor carrier to accompany such application with a list identifying each vehicle (other than one to be used in driveaway operations) which it intends to operate within the borders of this state during the ensuing year. The commission shall further require the motor carrier to keep such list current by filing with it an identification of each vehicle acquired for operation within the borders of this state and each vehicle whose operation is discontinued therein after the filing of such list. The filing of an identification of such newly acquired or discontinued vehicle shall be made with the commission on or before the sixteenth day after the motor carrier initiates or discontinues operation of the vehicle within the borders of this state.

(e) On or before the thirty-first day of December of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the national association of regulatory utility commissioners (hereinafter referred to as NARUC) for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of the state during the ensuing year.

(f) A motor carrier receiving a cab card under the provisions of this article shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of this state during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of this state in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form or certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation.

(g) The registration and identification of a vehicle or driveaway operation under the provisions of this article and the
AN ACT to amend and reenact section three, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts and allowing each city, incorporated town or other municipal corporation having a population over three thousand to appoint one person to the public service board of its district.

Be it enacted by the Legislature of West Virginia:

That section three, 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-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

1 From and after the date of the adoption of the order creating any 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 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 the 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 the 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 the district: Provided, That no 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 the municipalities for the public service properties.

The powers of each 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. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand shall be entitled to appoint one member of the 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 the 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 the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the 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 the board and the members shall be and constitute the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand 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 the 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 the 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 the 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 the board, if any, to be appointed by the governing body or bodies thereof, shall be conclusively considered 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 the 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 the 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 the first day of January 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 the 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 other duties appertaining to the affairs of the district and shall receive 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.

CHAPTER 167

(H. B. 2032—By Mr. Speaker, Mr. See)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the governor to determine the location of the principal office of the railroad maintenance authority.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, 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 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.


1 The West Virginia railroad maintenance authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

4 (a) The authority shall have the power and capacity to:

5 (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 ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the governor.

(5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any such governmental agency or person and, in accordance with 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, railroad projects, and, in accordance with 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 railroad project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue railroad maintenance authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds, for the purpose of paying any part of the cost of one or more railroad 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, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(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 railroad project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a railroad project pursuant to section sixteen 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 railroad 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) Appoint a director and employ managers, superintendents and other employees and retain or contract with consulting engineers, financial consultants, accountants, 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 from the proceeds of railroad maintenance authority revenue bonds or notes issued by the authority, from revenues and funds appropriated for such purpose by the Legislature or from grants from the federal government which may be used for such purpose.

(13) Receive and accept from any state or federal agency, grants for or in aid of the construction of any railroad project or for research and development with respect to railroads 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 railroads.

(15) Purchase fire and extended coverage and liability insurance for any railroad 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 be a member of, and to participate in, the state workmen's compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority shall have the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the interstate commerce commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.
(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon such terms, conditions, rates or rentals as can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Establish a state plan for rail transportation and local rail services.

(5) Administer and coordinate such state plan.

(6) Provide in such state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.

(7) Promote, supervise and support safe, adequate and efficient rail services.

(8) Employ sufficiently trained and qualified personnel for these purposes.

(9) Maintain adequate programs of investigation, research, promotion and development in connection with such purposes and to provide for public participation therein.

(10) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(11) Comply with the regulations of the secretary of transportation of the United States department of transportation affecting federal rail service continuation programs.

(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.
AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to installation of illuminating devices on certain railway cabooses for protection of workmen and property when such cars are being pushed at night; exemptions; enforcement; penalty; and liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. ILLUMINATION EQUIPMENT FOR RAILROAD CABOSES.

§31-2B-1. Legislative findings and purposes.

§31-2B-2. Illumination requirements; time periods for implementation; application of requirements.

§31-2B-3. Repair and maintenance; exemption.

§31-2B-4. Runs originating from out of state.

§31-2B-5. Enforcement penalty.

§31-2B-6. No individual responsibility.

§31-2B-1. Legislative findings and purposes.

The Legislature hereby finds that for the purpose of protecting the lives of workmen, other persons and railroad equipment there shall be maintained at the rear of cabooses illumination when they are being pushed during hours of darkness.

§31-2B-2. Illumination requirements; time period for implementation; application of requirements.

(a) From the effective date of this article, there shall be maintained at the rear of all cabooses, while cabooses are being pushed during the hours of darkness, either a
handheld or installed backup light which shall have
sufficient candlepower to illuminate the track for a dis-
tance of at least two hundred fifty feet under clear
atmospheric conditions on all local and mine runs.

(b) Every railroad company operating within this
state shall be required to comply with the provisions of
this article, but shall have one year from the effective
date hereof to comply with such requirements.

(c) The provisions of this article shall apply to all
local and mine run cabooses.

§31-2B-3. Repair and maintenance; exemption.

Any railroad company operating a caboose to which the
illumination requirements of section two of this article
apply shall not be in violation of said article if the failure
of lighting equipment required under the provisions of
this article is corrected at the first point maintenance
supplies are available, or in the case of repairs, the first
point at which materials and repair facilities are avail-
able and repairs can reasonably be made.

§31-2B-4. Runs originating from out of state.

Runs originating from without the state of West Vir-
ginia shall be exempt from the requirements of this
article.

§31-2B-5. Enforcement penalty.

The provisions of this article shall be enforced by the
public service commission. If any railroad company vio-
lates the provisions of this article, it shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not more than five hundred dollars for each violation.

§31-2B-6. No individual responsibility.

With the exception of intentional misconduct or negli-
gence on the part of the employee, this article shall not
be construed to impose any individual responsibility
upon any railroad employee for damage to his employer
due to breakage or loss of use while the employee is
engaged in handling the lights as required by this article.
This article shall be construed as imposing upon the employer responsibility for securing and maintaining the lights required by this article.

CHAPTER 169

(S. B. 630—By Mr. McGraw, Mr. President)

[Passed March 8, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to authorizing the issuance and sale of notes as special obligations of the state of West Virginia to finance the construction of surface transportation improvements; setting forth the purpose and scope thereof; definition of terms; authorizing the issuance of notes or other obligations either definitive or temporary; defining the use of the proceeds of such notes; providing for the execution of notes; providing for the issuance of a declaration establishing terms and sale of notes issued; providing for matters to be contained in the declaration establishing the terms and sale of such notes; manner of sale of notes including determination of price, and terms and conditions to be made by five-member group and composition thereof; five-member group to serve as financial advisor with authorization to retain professional financial assistance; security of notes issued; pledge and assignment of security; validity and binding effect of pledge or assignment; trust agreements with trust companies or banks to be set forth in trust agreements; rights of individual holders of notes until such notes are discharged; limitation of liability of the state of West Virginia, commissioner of the West Virginia department of highways and any officers of the state of West Virginia executing notes or agreements in connection with the issuance of notes or other obligations; authorizing certain persons, companies, banks and associations who or which
may invest funds properly and legally, including capital belonging to them or in their control, to invest in such notes; exemption of notes and income from certain taxation; providing for attorney general or his duly appointed legal representative to serve as note counsel and that legal expenses approved by attorney general, incurred in the execution of this act, shall be a payable cost thereunder.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

§17-17A-1. Purpose and scope.
§17-17A-2. Definitions.
§17-17A-3. Authorization of notes.
§17-17A-4. Establishment of terms and sale of notes; financial advisor.
§17-17A-6. Rights of holders; limitation on liability of state.
§17-17A-7. Legality for investments; tax exemption.
§17-17A-8. Attorney general or his duly appointed legal representative to serve as note counsel; legal expenses a payable cost.

§17-17A-1. Purpose and scope.

1 This article is intended to facilitate the acquisition of right-of-way for and the construction of improvements to interstate routes sixty-four and seventy-seven to be funded wholly or in part by amounts to be made available pursuant to the Federal Surface Transportation Assistance Act of one thousand nine hundred eighty-two, or from amounts specifically appropriated or dedicated therefor by the state, or from amounts which may properly be expended from the state road fund under article three, chapter seventeen of this code. This article authorizes notes, in an aggregate amount of outstanding notes not to exceed sixty-four million dollars, to be issued to provide construction financing for such improvements in anticipation of reimbursement from such sources, but such notes will be special obligations of the state only,
16 and will not be general obligations of the state or secured by any claim on the general credit or taxing power of the state.

§17-17A-2. Definitions.

1 As used in this article, the following words and terms shall have the following meaning:

3 "Commissioner" means the West Virginia commissioner of highways.

5 "Cost," when used with respect to any surface transportation improvement, means any and all costs of acquiring, constructing, reconstructing, replacing, completing or repairing any surface transportation improvement, including, without limiting the generality of the foregoing, land, property, rights, franchises, materials, labor and services, contractors' fees, planning and engineering expenses, financing costs, legal fees, trustees' or paying agents' fees and interest on obligations issued under this article.

15 "Note" means any note or other obligation issued pursuant to this article.

17 "Outstanding note" means a note which has been issued pursuant to this article and has not been repaid, but does not include notes which are to be paid from designated moneys or securities which are irrevocably held in trust solely for such purpose.

22 "Surface transportation improvement" means interstate completion projects on interstate route sixty-four or on interstate route seventy-seven, as to which all or a portion of the cost thereof is to be reimbursed to the state under federal surface transportation legislation.

§17-17A-3. Authorization of notes.

1 The commissioner is hereby authorized to pay the cost of any surface transportation improvement through the issuance of special obligation notes. No such notes may be issued, however, unless they are part of an issue described in a written declaration executed by the gov-
error and the commissioner and filed in the office of the secretary of state.

Except in the case of renewal notes, the proceeds of such notes shall be used solely for the payment of the cost of the surface transportation improvements which they were issued to finance, which shall be verified by the commissioner and under such further restrictions, if any, as may be provided. If the proceeds of such notes, by error or calculation or otherwise, shall be less than the cost of the related surface transportation improvements, additional notes may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same sources, without preference or priority of the notes first issued for the same related surface transportation improvements. If the proceeds of notes issued for any related surface transportation improvements shall exceed the cost thereof, the surplus shall be applied to the payment, purchase or redemption of such notes.

Such notes shall be executed by the governor and the commissioner, under the great seal of the state, attested by the facsimile signature of the secretary of state, and the coupons, if any, attached thereto shall be authenticated by the facsimile signature of the commissioner. The governor and the commissioner may execute such notes by their facsimile signatures, but, unless provision has been made for the authentication thereof by a trustee determined to be responsible by the commissioner, each note shall bear at least one manual signature.

Prior to the preparation of definitive notes, the governor and the commissioner may under like restrictions issue temporary notes with or without coupons, exchangeable for definitive notes upon the issuance of the latter. Such notes 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 or by the constitution of the state.
§17-17A-4. Establishment of terms and sale of notes; financial advisor.

The description contained in any declaration with respect to an issue of notes hereunder shall specify the particular surface transportation improvements to be financed through the issuance of the notes, the estimate of the cost of such improvements, the aggregate amount of outstanding notes which may at any point in time constitute a part of such issue, the time or times and manner of sale of such notes, and the particular terms of such notes, or the manner in which such terms will be determined, including the date or dates, time or times of issuance, time or times and amount or amounts of maturity or maturities, specified or variable rate or rates of interest, the form of such notes and provisions for registration or exchange, if applicable, the method and manner of payment of such notes, the provisions, if any, for redemption or renewal of such notes, and specifying such other similar matters as the commissioner may determine to be necessary and appropriate in connection with the sale and issuance of the notes.

The notes of an issue described in any such declaration shall be sold in such manner, at such price or prices and on such terms and conditions as no less than three members of the five-member group, comprised of the treasurer, the auditor, the commissioner of finance and administration, the tax commissioner and the commissioner, determines to be in the best interest of the state, taking into account the financial responsibility of the purchaser and the terms and conditions of purchase and especially the availability of the proceeds of the notes when needed to pay the cost of the related surface transportation improvements. Such five-member group shall serve as financial advisor and upon the determination of no less than three members, as aforesaid, may retain professional financial assistance for such purpose.


In connection with any issue of notes hereunder, the commissioner may pledge or assign, as security for the
payment of the principal of or interest on such notes, any of the following:

(a) Any amounts to be received from the United States of America, or any agency or instrumentality thereof, as reimbursements of the costs incurred in connection with the surface transportation improvements to be financed by such notes, together with the rights and interests of the state with respect to such reimbursement;

(b) Any amounts in the state road fund which may properly be applied to the reimbursements of any such costs pursuant to article three of this chapter seventeen;

(c) The proceeds of any such notes pending their use or of notes which may be issued to renew or refund such notes;

(d) The proceeds of any insurance or letters of credit or similar arrangements undertaken in connection with the acquisition, construction or financing of such surface transportation improvements;

(e) Any other amounts specifically designated for the purpose of paying any such costs, but only to the extent appropriated by the Legislature and paid from general revenues prior to such pledge or dedicated for such purpose by the Legislature from proprietary revenues of the state.

Any such pledge or assignment shall be valid and binding from the time it is made, and the lien of such pledge or assignment shall be enforceable and need not be perfected by delivery or any filing or further act. Such lien shall be valid against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge or assignment.

The commissioner may enter into an agreement or agreements with any trust company or with any bank having the power of a trust company, either within or outside of the state, as trustee for the holders of notes issued hereunder, setting forth therein such duties of the
state and of the commissioner in respect of the acquisition
and construction of surface transportation improvements,
the conservation and application of all moneys, the in-
surance of moneys on hand or on deposit, and the rights
and remedies of the trustee and the holders of the notes,
as may be agreed upon with the original purchasers of
such notes, and including therein provisions restricting
the individual right of action of holders as is customary
in such trust agreements to protect and enforce the rights
and remedies of the trustee and the holders. All expenses
incurred in carrying out such agreement may be treated
as a part of the cost of construction of the surface trans-
portation improvements affected by the agreement.

§17-17A-6. Rights of holders; limitation on liability of state.

1 The state of West Virginia does hereby pledge to and
agree with the holders of any notes issued under this
article that the state will not limit or alter the rights
hereby vested in the commissioner to fulfill the terms
of any agreements made with the holders thereof, or in
any way impair the rights and remedies of such holders
until such notes, together with the interest thereon, with
interest on any unpaid installments of interest, and
all costs and expenses in connection with any action or
proceeding by or on behalf of such holders, are fully met
and discharged. The commissioner is hereby authorized
to include this pledge and agreement of the state in any
agreement with the holders of such notes.

14 The holder of any note, or the trustee therefor, shall
have the right to bring suit for the payment of such note
or to compel the enforcement of any agreement securing
such note to the extent therein provided. Such notes
shall be special obligations of the state, payable solely
from the sources herein provided, and shall not be a
general obligation debt or liability of the state or con-
stitute any claim on its general revenues or taxing power.
Neither the commissioner nor any other officer of the
state executing notes or other agreements hereunder shall
have any personal liability thereon or be subject to per-
sonal accountability therefor.
§17-17A-7. Legality for investment; tax exemption.

The notes are hereby made securities in which all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, 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.

The notes and the income therefrom shall at all times be exempt from taxation, except for death and gift taxes, taxes on transfers, sales taxes, real property taxes and business and occupation taxes.

§17-17A-8. Attorney general or his duly appointed legal representative to serve as note counsel; legal expenses a payable cost.

The attorney general, or his duly appointed legal representative, shall serve as note counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such notes. Legal expenses, approved by the attorney general, incurred in the execution of this act, shall be a payable cost thereof.

CHAPTER 170

(5. B. 53—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to areas where salvage yards may be established; screening from the public view; issuance of permits by the county planning commission or other designated agency.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. SALVAGE YARDS.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards.

On and after the effective date of this article, (1) no license shall be issued to establish a salvage yard or any part thereof within one thousand feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: Provided, That this limitation shall not apply to landfills established and maintained by any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system, and (2) no license shall be issued to establish a salvage yard or any part thereof within three hundred feet of the nearest edge of the right-of-way of any state local service road, unless the view thereof from such state local service road shall be effectively screened and obscured by fences: Provided, That this limitation shall not apply to landfills established and maintained by any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system.

The license of any salvage yard duly issued under the former provisions of this article, which salvage yard or any part thereof on the effective date of this article, is (1) within one thousand feet of the nearest edge of the
right-of-way of any road within the state road system
designated and classified or redesignated and reclassified
as expressway, trunk line, or feeder, or any road within
the state road system designated and classified or re-
designated and reclassified for purposes of allocation of
federal highway funds as part of the federal-aid interstate
or primary systems or is (2) within three hundred feet
of the nearest edge of the right-of-way of any state local
service road, may be renewed only if the view of the said
salvage yard and all parts thereof are effectively screened
from the adjacent road by natural objects, plantings,
fences or other appropriate means.

Any salvage yard which, on the effective date of this
article, is duly licensed under the former provisions of
this article may be established or continue to be operated
and maintained without screening by natural objects,
plantings, fences or other appropriate means so long as
any part of such salvage yard is (1) not located within
one thousand feet of any road within the state road
system designated and classified or redesignated and re-
classified as expressway, trunk line, or feeder, or any
road within the state road system designated and classi-
fied or redesignated and reclassified for the purposes of
allocation of federal highway funds as part of the federal-
aid interstate or primary systems or is (2) not located
within three hundred feet of the nearest edge of the
right-of-way of any state local service road.

On or after the first day of July, one thousand nine
hundred eighty-three, any owner or operator establish-
ing, operating or maintaining a salvage yard for which a
license is required under the provisions of section three
of this article is hereby required to obtain a permit from
the county planning commission, or if the county does
not have a county planning commission, from an office
or agency designated by the county commission, in which
the salvage yard is located. There shall be no charge for
the permit. The permit requirement of this section does
not apply to any owner or operator who has established,
or is operating or maintaining, a salvage yard prior to the
first day of July, one thousand nine hundred eighty-three.
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-f, relating to the creation of a solid waste management act; transferring authority over the management of solid waste from the department of health to the department of natural resources; purpose and legislative findings; definitions; powers and duties of the director of natural resources and the chief of the water resources division; rules; prohibited acts; permits required; orders; inspections; enforcement; civil and criminal penalties; appeal and review procedures; short title.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-1. Purpose and legislative findings.

§20-5F-2. Definitions.

§20-5F-3. Transfer of authority.

§20-5F-4. Powers and duties; rules and rule making.

§20-5F-5. Prohibitions; permits required.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

§20-5F-7. Appeal and review procedures.


§20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdiction
2 over the management of solid waste under section nine,
3 article one, chapter sixteen of the code from the department
4 of health to the department of natural resources and to
5 establish a comprehensive program of controlling solid
6 waste disposal.

7 (b) The Legislature finds that uncontrolled,
8 inadequately controlled and improper collection,
9 transportation, processing and disposal of solid waste (1) is
a public nuisance and a clear and present danger to people;
(2) provides harborages and breeding places for disease-
carrying, injurious insects, rodents and other pests harmful
to the public health, safety and welfare; (3) constitutes a
danger to livestock and domestic animals; (4) decreases the
value of private and public property, causes pollution,
blight and deterioration of the natural beauty and resources
of the state and has adverse economic and social effects on
the state and its citizens; (5) results in the squandering of
valuable nonrenewable and nonreplenishable resources
contained in solid waste; (6) that resource recovery and
recycling reduces the need for landfills and extends their
life; and that (7) proper disposal, resource recovery or
recycling of solid waste is for the general welfare of the
citizens of this state.

§20-5F-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article the terms:

(a) “Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article;

(b) “Director,” “board,” “chief,” “person,” “persons,” “applicant,” “water,” “waters,” “water resources,” “sewage,” “point source,” “code” and “department” shall have the same meaning as defined in section two, article five-a, chapter twenty of the code;

(c) “Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment;

(d) “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin;

(e) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter,
solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining, agricultural operations or from community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of the code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or a hazardous waste either identified or listed under article five-e, chapter twenty of the code or refuse, slurry and overburden regulated under article six, chapter twenty of the code;

(f) "Solid waste disposal" means the practice of disposing solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste; and

(g) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified.

§20-5F-3. Transfer of authority.

1 The Legislature hereby transfers from the department of health to the department of natural resources the duties, responsibilities and authority of the state director of health under section nine, article one, chapter sixteen of the code as to the permitting and regulating of solid wastes and hereby designates the chief to be the authorized representative denoted in that section for this purpose: Provided, That the state director of health shall retain authority under chapter sixteen of the code to enforce the public health laws over solid waste disposal which presents an imminent and substantial endangerment to the public health.

§20-5F-4. Powers and duties; rules and rule making.

1 In addition to all other powers, duties, responsibilities and authority granted and assigned to the director and chief in the code and elsewhere described by law, they are hereby empowered as follows:
(a) The director may adopt rules and regulations in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and regulations and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules and regulations the director may consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, origin or characteristics of the solid waste, public sentiment, the financial capability of the applicant, soil and geological considerations and other natural resource considerations. All existing rules and regulations of the department of health relating to solid waste disposal shall remain valid and be enforceable by the department of natural resources on the effective date of this article until changed or modified by the director, in compliance with chapter twenty-nine-a of the code.

(b) The chief, after public notice and opportunity for public hearing, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or abandonment of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility may cause adverse impacts on the natural resources and environmental concerns under the director's purview in chapter twenty of the code, destruction of aesthetic values, destruction or endangerment of the property of others or is significantly adverse to the public sentiment of the area where the solid waste facility is, or will be, located. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above cited factors and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director, chief or any authorized representative, employee or agent of the department, may at reasonable
times, enter onto any approved solid waste facility, open
dump, solid waste facility or property where solid waste is
present for the purpose of making an inspection or
investigation of solid waste disposal.

(d) The director, chief or any authorized representative,
employee or agent of the department may, at reasonable
times, enter any approved solid waste facility, open dump,
solid waste facility or property where solid waste is present
and take samples of the waste, soils, air or water or may,
upon issuance of an order, require any person to take and
analyze samples of such waste, soil, air or water.

(e) The director or chief may also perform or require a
person, by order, to perform any and all acts necessary to
carry out the provisions of this article or the rules
promulgated thereunder.

(f) The chief or his authorized representative, employee
or agent shall make periodic inspections at every approved
solid waste facility to effectively implement and enforce the
requirements of this article or its rules and regulations.

§20-5F-5. Prohibitions; permits required.

(a) Open dumps are prohibited and it shall be unlawful
for any person to create, contribute to or operate an open
dump or for any landowner to allow an open dump to exist
on his property unless that open dump is under a
compliance schedule approved by the chief. Such
compliance schedule shall contain an enforceable sequence
of actions leading to compliance and shall not exceed three
years. No portion of this subsection shall be construed to
prevent a person from disposing of solid waste from his own
household upon his own private, rented or leased property
as long as such disposal does not create a public nuisance,
hazard to health, violate the terms of section fifteen, article
five, chapter twenty of the code or other provisions of the
code.

(b) It shall be unlawful for any person, unless he holds a
valid permit from the division to install, establish,
construct, modify, operate or abandon any solid waste
facility. All approved solid waste facilities shall be
installed, established, constructed, modified, operated or
abandoned in accordance with this article, plans,
specifications, orders, instructions and rules in effect.
(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article five-a and the rules promulgated thereunder, so that only a single permit shall be required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That the chief may administratively extend a permit beyond its five year term if the approved solid waste facility is in compliance with this article, its rules and article five-a of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, a new permit may be issued upon application, public notice and opportunity for public hearing, if the approved solid waste facility will meet all applicable rules, standards, limitations and other requirements of this article and article five-a.

(d) All existing permits of the department of health for solid waste facilities under section nine, article one, chapter sixteen of the code shall continue in full force and effect until a permit is issued for that approved solid waste facility under this article: Provided, That all such existing permits of the department of health shall expire within five years of the effective date of this article. Within four years of the effective date of this article, all persons holding such department of health permits shall apply to the chief for a permit under this article: Provided, however, That the chief may require persons holding such existing health department permits to reapply under this section prior to four years from the effective date of this article if persistent violations of this article, any permit term or condition, orders or rules promulgated under this article, exists at that facility.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

(a) If the director or chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of this article, its rules, article five-a of this chapter or its rules, or any permit or order issued under this article, he may issue an order requiring compliance within a specified time which may exceed thirty days or suspending or revoking the permit.
(b) Any person who willfully or negligently violates any rules or regulations promulgated under this article, permit terms and conditions or orders of the director or chief shall be subject to the same criminal penalties as set forth in section nineteen, article five-a, chapter twenty of the code.

c) Any person who violates this article, any rules promulgated thereunder, permit term or condition or order of the chief or director shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation. The director or chief may institute civil actions to obtain injunctive or other relief either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

§20-5F-7. Appeal and review procedures.

(a) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or chief, or by the issuance or denial of a permit or by the permit's terms or conditions, may appeal to the water resources board in the same manner as appeals are taken under the water pollution control act, section fifteen, article five-a, chapter twenty of the code.

(b) Any party, the director or the chief adversely affected by an order made and entered by the water resources board may obtain judicial review thereof in the same manner as provided for under section sixteen, article five-a of the water pollution control act.


This article may be known and cited as the "solid waste management act."

CHAPTER 172

(Com. Sub. for H. B. 1340—By Mr. Faircloth)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section one, article six, 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 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings.

“The State Office Building Commission of West Virginia” heretofore created, shall continue in existence but on and after February nine, one thousand nine hundred sixty-six, shall be known and designated as “The State Building Commission of West Virginia” and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, attorney general, state treasurer and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The governor shall be chairman of the commission. The secretary of state shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their ser-
vices as members or officers of the commission: Provided,

That each member of the commission appointed by the governor shall, in addition to such reimbursement for necessary expenses receive a per diem of thirty-five dollars for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates a report covering the activities of the said commission for the preceding calendar month.

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 state building commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state building commission shall continue to exist until the first day of July, one thousand nine hundred eighty-six.

CHAPTER 173
(S. B. 26—By Mrs. Spears)

[Passed February 18, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deposit of funds of the state building commission; providing for review by the legislative auditor.

Be it enacted by the Legislature of West Virginia:

That section five, article six, 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 6. STATE BUILDING COMMISSION.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

1 All moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia who shall not commingle said moneys, but shall deposit them to a special revenue account to be known as the "State Building Commission Fund." The moneys in said account shall be impressed with and subject to the lien or liens thereon in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in said account shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make such requisition. All deposits of such moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such security for such deposits. The legislative auditor and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

CHAPTER 174

(S. B. 135—By Mrs. Spears)

[Passed March 9, 1983; in effect ninety days from passage. 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 termination of certain governmental entities or programs.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be 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:

7 (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.

11 (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.

17 (3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory commission; community development authority board.

21 (4) On the first day of July, one thousand nine hundred eighty-four: Office of the workers’ compensation commissioner; capitol building commission; 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 com-
mission; labor management advisory council; employ-
ment security advisory council; oil and gas conservation
commission; board of regents.

(6) On the first day of July, one thousand nine hun-
dred 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 bank-
ing and financial institutions: Provided, That in the case
of the public service commission, the study by the com-
mittee 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 pur-
suant to section one, article one, chapter twenty-four of
this code for review, examination and study of the opera-
tions of the public service commission; state building
commission.

(7) On the first day of July, one thousand nine hun-
dred 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 hun-
dred eighty-eight: Information system advisory comis-
sion; veteran's council; labor management relations board;
board of investments; records management and preserva-
tion advisory committee; minimum wage rate board.

(9) On the first day of July, one thousand nine hun-
dred eighty-nine: Mental retardation advisory commit-
tee; interagency committee on pesticides; commission on
charitable organizations; board of school finance; vete-
CHAPTER 175
(H. B. 1894—By Mr. Goff and Mr. Farley)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfers exempt from inheritance and transfer taxes; pension benefits received by beneficiaries of policemen’s and firemen’s pension funds.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

§11-11-1. When imposed.

A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust, or otherwise, of any property, or interest therein, real, personal or mixed, if such transfer be:

(a) By will or by laws of this state regulating descent and distribution from any person who is a resident of the state at the time of his death and who shall die seized or possessed of property.

(b) By will or by laws regulating descent and distribution of property within the state, or within its taxing jurisdic-
tion, and the decedent was a nonresident of the state at the
time of his death.

(c) By a resident, or by a nonresident owning taxable
property within the state or within its jurisdiction, by deed,
grant, sale or gifts, made in contemplation of the death of
the grantor, vendor or donor, or intended to take effect
in possession or enjoyment at or after such death, or where
any change in the use or enjoyment of property included
in such transfer, or the income thereof, may occur in the
lifetime of the grantor, vendor or donor, by reason of any
power reserved to, or conferred upon, the grantor, vendor
or donor, either solely or in conjunction with any person
or persons, to alter, or to amend, or to revoke any trans­
fer, or any portion thereof, as to the portion remaining at
the time of death of the grantor, vendor or donor, thus
subject to alteration, amendment or revocation. If any one
of the transfers mentioned in this subdivision is made for
valuable consideration, the portion of the transfer for which
the grantor, or vendor receives equivalent monetary value is
not taxable, but the remaining portion thereof is taxable.
Every transfer by deed, grant, sale or gift, made within three
years prior to the death of the grantor, vendor or donor,
without adequate valuable consideration, shall be presumed
to have been made in the contemplation of death within the
meaning of this subdivision.

(d) By any person who shall transfer any property which
he owns, or shall cause any property to which he is absolutely
entitled to be transferred to or vested in himself and any
other person jointly, with the right of survivorship, in whole or
in part, in such other person, a transfer shall be deemed to
occur and to be taxable under the provisions of this article
upon the vesting of such title in the survivor: Provided,
That this subdivision shall not apply to bank accounts and to
shares or savings accounts in federal savings and loan as­
associations organized under the federal homeowners' loan act
of one thousand nine hundred thirty-three, as amended,
or in building and loan associations organized under article
six, chapter thirty-one of this code, payable to the class
designated in clause (a), section two of this article in a
total amount of twenty-five hundred dollars or less: Provided, however, That in the case of a surviving spouse, not more than fifty percent of the value of any transfer mentioned in this subdivision (d) shall be included and taxed in any such decedent's estate.

(e) To any person deriving an estate in property coupled with a general or limited power of appointment:

(1) General power.—Any transfer involving the creation of a general power of appointment shall be treated as transferring to the donee of the power a fee or equivalent interest in the property which is subject to the power.

(2) Limited power.—Any transfer involving the creation of any other power of appointment shall be treated as transferring to the donee of the power a life estate or term of years in the property which is subject to the power and as transferring remainder or reversionary interests therein to those who would take if the power is not exercised. The portion of tax which is imposed on any person entitled in remainder or reversion shall be payable in the same manner, and within the same time, as if such person’s interest had vested in possession. Unless otherwise provided by the decedent, the tax on such temporary interests and on such remainder or reversionary interests shall be payable out of the corpus of the property which is subject to the power.

(f) By the exercise or nonexercise of a general power of appointment:

(1) Power that remains unexercised at time of death.—If at the time of his death a decedent has a general power of appointment with respect to property, the exercise of that power is subject to tax as a transfer of the property from the decedent to the person to whom the property is appointed. The failure of the decedent to exercise a general power of appointment is subject to tax as a transfer of the property from the decedent to the person to whom the property passes by virtue of the nonexercise of the power. For purposes of this paragraph the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of that power is subject to a precedent
giving of notice or even though the exercise of the power takes
effect only on the expiration of a stated period after its exer-
cise, whether or not on or before the date of the decedent's
death, notice has been given or the power has been exercised.

(2) Exercise or release by decedent of power during his
lifetime.—The exercise or release by the decedent during his
lifetime of a general power of appointment is a transfer subject
to tax if the exercise or release is of such a nature that if it
were a transfer of property owned by the decedent, such trans-
fer would be subject to tax under this article. A disclaimer
or renunciation of such a power of appointment shall not be
deemed a release of such power.

(3) Definition.—For purposes of subdivisions (e) and
(f), the term "general power of appointment" and the term
"lapse of power" shall have the same meaning as when used in
section 2041 of the Internal Revenue Code.

(g) By the terms of any annuity or investment contracts,
or similar type or form of contract or policy, and shall be
on the amount payable under any such contract or policy, on
account of a death, to named beneficiaries, to his estate or
in trust for the benefit of any individual or individuals,
including (1) all such policies or contracts hereafter issued,
and (2) all such policies or contracts now in force: Pro-
vided, That there shall be exempt from the provisions of
this subdivision the proceeds of such contracts or policies:

(i) When the premiums on such policies or contracts were
paid by the beneficiary named in such policy or contract, to
the extent only of the ratio of premiums paid by the bene-
iciary bear to the total premiums paid;

(ii) When the proceeds of such policies or contracts have
been assigned by the decedent for a valuable consideration
either in form absolute or as collateral security for the
payment of a bona fide indebtedness of the decedent, to the
extent that the proceeds thereof shall be necessary to pay
and satisfy indebtedness: Provided, however, That no annuity
settlement or arrangement accepted in lieu of cash settlement
of a life insurance policy, whereby the proceeds of such
policy are payable in installments, shall be subject to taxa-
Where annuity or investment contracts or policies are left by a decedent in such manner that the proceeds thereof cannot be subjected to the payment of his debts, and where the proceeds of such annuity or investment contracts are received by beneficiaries thereof, the fact that the decedent may have been insolvent and that a portion of his debts may remain unpaid shall not affect the liability for inheritance tax on such proceeds.

Notwithstanding anything contained herein to the contrary, there shall be exempt from tax hereunder the proceeds of an annuity or other payment, whether attributable to employer contribution, employee contribution or otherwise, receivable by any beneficiary under:

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan, including self-employed plans, which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a) of the Internal Revenue Code;

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a) of the Internal Revenue Code;

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b) (1) (A) (ii) or (vi) of the Internal Revenue Code, or which is a religious organization (other than a trust) and which is exempt from tax under section 501(a) of the Internal Revenue Code;

(4) Annuity under the retired serviceman's family pro-
(5) A retirement savings plan for which a deduction has been allowed under section 218 of the Internal Revenue Code;

(6) A pension or relief fund for policemen and firemen established pursuant to the provisions of section sixteen, article twenty-two, chapter eight of this code; and the effect of this exemption from taxation with respect to surviving spouses and dependent children of deceased policemen and firemen shall be retroactive to the first day of January, one thousand nine hundred eighty-one.

All references to the Internal Revenue Code shall be to the Internal Revenue Code of 1954, as amended, as in effect on the first day of January, one thousand nine hundred seventy-six. All references to the United States Code shall be to the United States Code in effect on the first day of January, one thousand nine hundred seventy-six.

CHAPTER 176

(Com. Sub. for S. B. 310—By Mr. McGraw, Mr. President)

(Passed March 12, 1983; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two, two-k, three and three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four-c, four-d, sixteen and seventy-one, article twenty-one of said chapter eleven; to amend said article twenty-one by adding thereto a new section, designated section four-e; to amend and reenact sections four and nine, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto three new sections, designated sections four-a, ten and seventeen-a, all relating to taxation on account of business and other activities on personal income, corporation net income, gross income and gross values; providing for the transitional reduction of
business and occupation tax during five-year period beginning the first day of July, one thousand nine hundred eighty-five through June thirtieth, one thousand nine hundred ninety, and exception; providing for temporary surtax on redefined gross income of persons engaged in banking or financial business; increasing business and occupation tax annual exemption; amending definitions; providing for increase in personal income tax rate brackets above specified level; providing for temporary surtax on personal income in certain brackets; establishing minimum tax on personal income; creating separate classification and rate tables for heads of households; providing for effect of any rate changes during taxable year; increasing the amount of the West Virginia personal income tax exemption and providing for withholding conformity therewith; changing corporation net income tax rate and providing for two rate brackets; imposing temporary surtax on corporations net income; providing for effect of any rate changes during taxable year; reducing amount of business and occupation tax or carrier tax credits applicable against corporation net income tax liability; providing for taxpayer, at his option, to elect full deduction of such tax liabilities in lieu of credit; providing a credit to manufacturing employers for hiring qualified employees during specified period, amount of credit and period thereof, limitations thereon and definitions thereof; and providing for application of interest to underpayments of tax or estimated tax.

Be it enacted by the Legislature of West Virginia:

That sections two, two-k, three and three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four-c, four-d, sixteen and seventy-one, article twenty-one of said chapter eleven be amended and reenacted; that said article twenty-one be further amended by adding thereto a new section, designated section four-e; that sections four and nine, article twenty-four of said chapter eleven be amended and reenacted; and that said article twenty-four be further amended by adding thereto three new sections, designated sections four-a, ten and seventeen-a, all to read as follows:
ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax; transitional reduction, across-the-board, of tax during five-year period July one, one thousand nine hundred eighty-five through June thirtieth one thousand nine hundred ninety.

§11-13-2k. Banking and other financial business; rate of tax; additional, temporary surtax imposed and period thereof; legislative findings.

§11-13-3. Exemptions; transitional increase of annual exemption and periods thereof.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

§11-13-2. Imposition of privilege tax; transitional reduction, across-the-board, of tax during five-year period July one, one thousand nine hundred eighty-five through June thirtieth, one thousand nine hundred ninety.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k.

During the five-year period, beginning on the first day of July, one thousand nine hundred eighty-five and through the thirtieth day of June, one thousand nine hundred ninety, the taxes imposed by this section and at the rates set forth in sections two-a through two-m, and the surtax imposed in section two-k, shall be reduced by five percent for each year thereof through reduction of the rates applicable and in effect on the first day of July, one thousand nine hundred eighty-five: Provided, That there shall be no such reduction of the tax imposed in section two-l for the use and benefit of counties and municipalities.

If any person liable for any tax under section two-a, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out
of the state shall be the basis for the assessment of the tax
imposed in said section, except in those instances in which
another measure of the tax is expressly provided. The tax
commissioner shall prescribe equitable and uniform rules
for ascertaining such value.

In determining value, however, as regards sales from one
to another of affiliated companies or persons, or under
other circumstances where the relation between the buyer
and seller is such that the gross proceeds from the sale are
not indicative of the true value of the subject matter of the
sale, the tax commissioner shall prescribe uniform and
equitable rules for determining the value upon which such
privilege tax shall be levied, corresponding as nearly as
possible to the gross proceeds from the sale of similar
products of like quality or character where no common
interest exists between the buyer and seller but the
circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under
sections two-a, two-b, two-l and two-m of this article shall
neither be added nor deducted in computing the tax levied
under the other sections of this article.

A person exercising any privilege taxable under section
two-a, two-b, two-l or two-m of this article and engaging in
the business of selling his natural resources, manufactured
products or electricity at retail in this state shall be required
to make returns of the gross proceeds of such retail sales and
pay the tax imposed in section two-c of this article for the
privilege of engaging in the business of selling such natural
resources, manufactured products or electricity at retail in
this state. But any person exercising any privilege taxable
under section two-a, two-b, two-l or two-m of this article
and engaging in the business of selling his natural
resources, manufactured products or electricity to
producers of natural resources, manufacturers,
wholesalers, jobbers, retailers or commercial consumers for
use or consumption in the purchaser's business shall not be
required to pay the tax imposed in section two-c of this
article.

Persons exercising any privilege taxable under section
two-b or two-m of this article shall not be required to pay
the tax imposed in section two-c of this article for the
privilege of selling their manufactured products or
electricity for delivery outside of this state, but the gross
income derived from the sale of such products or electricity
outside of this state shall be included in determining the
measure of the tax imposed on such person in section two-b
or two-m.

A person exercising privileges taxable under the other
sections of this article, producing coal, oil, natural gas,
minerals, timber or other natural resource products, the
production of which is taxable under sections two-a and
two-l, and using or consuming the same in his business or
transferring or delivering the same as any royalty payment,
in kind, or the like, shall be deemed to be engaged in the
business of mining and producing coal, oil, natural gas,
minerals, timber or other natural resource products for sale,
profit or commercial use, and shall be required to make
returns on account of the production of the business
showing the gross proceeds or equivalent in accordance
with uniform and equitable rules for determining the value
upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds
from the sale of similar products of like quality or character
by other taxpayers, which rules the tax commissioner shall
prescribe.

§11-13-2k. Banking and other financial business; rate of tax;
additional, temporary surtax imposed and
period thereof; legislative findings.

1. Upon every person engaging or continuing within this
state in the business of banking or financial business, from
and after the first day of April, one thousand nine hundred
seventy-one, the tax shall be equal to one and fifteen one-
hundredths percent of the gross income received from
interest, premiums, discounts, dividends, service fees or
charges, commissions, fines, rents from real or tangible
personal property, however denominated, royalties,
charges for bookkeeping or data processing, receipts from
check sales, charges or fees, and receipts from the sale of
tangible personal property: Provided, That gross income
shall not include (a) interest received on the obligations of
the United States, its agencies and instrumentalities, (b)
interest received on the obligations of this state, or any
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political subdivision of this state, or (c) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients: Provided, however, That all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

In addition to the primary tax hereinabove, there is hereby imposed an additional, temporary surtax of fifteen percent of such primary tax liability and with such primary tax and additional tax, the temporary surtax, together, to constitute the tax imposed by this section. Such additional, temporary surtax is imposed for the period on and after the first day of June, one thousand nine hundred eighty-three, and to expire, be nullified and of no further force or effect whatsoever after the thirtieth day of June, one thousand nine hundred eighty-five.

Persons taxed pursuant to the provisions of this section shall not be taxed under sections two-a to two-j, inclusive, or section two-l or two-m of this article.

The Legislature hereby finds and declares that it is the intent of the Legislature to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the authorization contained in section five thousand two hundred nineteen of the Revised Statutes of the United States as amended by Public Law 91-156 enacted the twenty-fourth day of December, one thousand nine hundred sixty-nine.

§11-13-3. Exemptions; transitional increase of annual exemption and periods thereof.

For any tax imposed under the provisions of this article with respect to any period prior to the first day of July, one thousand nine hundred eighty-three, there shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only
For any tax imposed under the provisions of this article with respect to (a) the period beginning on and after the first day of July, one thousand nine hundred eighty-three, and through the thirtieth day of June, one thousand nine hundred eighty-four, there shall be an exemption in every case of twenty-five dollars per month; (b) the period beginning on and after the first day of July, one thousand nine hundred eighty-four, and through the thirtieth day of June, one thousand nine hundred eighty-five, there shall be an exemption in every case of thirty-three dollars and thirty-three cents per month; and (c) the period beginning on or after the first day of July, one thousand nine hundred eighty-five, there shall be an exemption in every case of forty-one dollars and sixty-seven cents per month in amount of tax computed under the provisions of this article. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of this article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit associations, organized under the provisions of the federal “Farm Credit Act of 1933”; (f) any credit union organized under the provisions of chapter thirty-one
or any other chapter of this code: Provided further, That the
exemptions of this section shall not apply to corporations or
cooperative associations organized under the provisions of
article four, chapter nineteen of this code; (g) gross income
derived from advertising service rendered in the business of
radio and television broadcasting; and (h) the gross income
or gross proceeds of sale of a gasification or liquefaction of
coa l project in the demonstration, pilot or research stages:
And provided further, That prior to the commencement of
operation of any such project, the tax commissioner shall
have first certified the project as eligible for such exemption:
And provided further, That such exemption shall expire
seven years from the date the project first receives gross
income or gross proceeds from sales.

§11-13-3b. Definitions; reduction allowed in tax due; how
computed.

1 When used in this section, the phrase “normal tax” means
the tax computed by the application of rates against values
or gross income as set forth in sections two-a to two-m,
inclusive, in this article, less the amount of the annual
exemption for the period actually engaged in business.

6 The normal tax shall be computed by the application of
rates against values or gross income as set forth in sections
two-a to two-m, inclusive, of this article, less the amount of
the annual exemption allowed and determined under
section three of this article.

11 The surtax shall be computed by the application of the
surtax rate against gross income as set forth in section
two-k of this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-3. Imposition of tax; additional temporary surtax imposed; effective
and termination dates; minimum tax; persons subject to tax.

§11-21-4c. Rate of tax—Taxable periods beginning on or after January 1,
1971 and ending before April 1, 1983.

§11-21-4e. Effect of rate changes during taxable year.
§11-21-16. West Virginia personal exemptions of resident individual.
§11-21-71. Requirement of withholding tax from wages.

§11-21-3. Imposition of tax; additional, temporary surtax im­
posed; effective and termination dates; minimum
tax; persons subject to tax.

1 (a) Imposition of tax.
(1) **Primary tax.**—A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate and trust.

(2) **Temporary surtax.**—In addition to the primary tax imposed upon the persons, for the periods, on West Virginia taxable income, and at the rates, as aforesaid, there is hereby imposed an additional tax, a temporary surtax, of twelve percent of such determined primary tax liability for individuals and heads of household with West Virginia taxable income in excess of ten thousand dollars and for those filing a joint return with West Virginia taxable income in excess of twenty thousand dollars; and with such primary tax and additional tax, the temporary surtax, together with the minimum tax herein, to constitute the tax imposed by this section and under this article.

(3) **Minimum tax.**—In addition to the primary tax and the temporary surtax imposed by this section, there is imposed a minimum tax, which shall be the excess, if any, by which an amount equal to twenty-five percent of any federal minimum tax or alternative minimum tax for the taxable year exceeds the sum of the primary tax and the temporary surtax imposed by this section for the taxable year.

(4) **Effective date.**—The additional tax, the temporary surtax herein imposed, and the minimum tax herein imposed are hereby made effective on and after the first day of April, one thousand nine hundred eighty-three: Provided, That the temporary surtax shall expire, be nullified and of no further force or effect whatsoever after the thirtieth day of June, one thousand nine hundred eighty-five. Section four-e of this article, applicable to the effect of any rate changes during a taxable year shall be construed to include and also be applicable to the surtax imposed in this section or any change of surtax hereafter during a taxable year.

(b) **Partners and partnerships.**—A partnership as such shall not be subject to tax under this article. Persons carrying on business as partners shall be liable for tax under this article only in their separate or individual capacities.
(c) Associations taxable as corporations. — An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt trusts and organizations. — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross references. — For definitions of West Virginia taxable income of:

(1) Resident individual, see section eleven.
(2) Resident estate or trust, see section eighteen.
(3) Nonresident individual, see section thirty-one.
(4) Nonresident estate or trust, see section thirty-eight.

§11-21-4c. Rate of tax—Taxable periods beginning on or after January 1, 1971 and ending before April 1, 1983.

(a) Rate of tax on individuals, heads of households, estates and trusts. — The tax imposed by section three of this article on the West Virginia taxable income of every individual, every individual who is a head of a household in the determination of his federal income tax for the taxable year, and every estate and trust shall be determined in accordance with the following table:
8 If the West Virginia taxable income is:
9 The tax is:
10 Not over $2,000...................... 2.1% of the taxable income
11 Over $2,000 but not over $4,000 .... $42.00, plus 2.3% of excess over $2,000
12 Over $4,000 but not over $6,000 .... $88.00, plus 2.8% of excess over $4,000
13 Over $6,000 but not over $8,000 .... $144.00, plus 3.2% of excess over $6,000
14 Over $8,000 but not over $10,000... $208.00, plus 3.5% of excess over $8,000
15 Over $10,000 but not over $12,000... $278.00, plus 4.0% of excess over $10,000
16 Over $12,000 but not over $14,000... $358.00, plus 4.6% of excess over $12,000
17 Over $14,000 but not over $16,000... $450.00, plus 4.9% of excess over $14,000
18 Over $16,000 but not over $18,000... $548.00, plus 5.3% of excess over $16,000
19 Over $18,000 but not over $20,000... $654.00, plus 5.4% of excess over $18,000
20 Over $20,000 but not over $22,000... $762.00, plus 6.0% of excess over $20,000
21 Over $22,000 but not over $26,000... $882.00, plus 6.1% of excess over $22,000
22 Over $26,000 but not over $32,000... $1,126.00, plus 6.5% of excess over $26,000
23 Over $32,000 but not over $38,000... $1,516.00, plus 6.8% of excess over $32,000
24 Over $38,000 but not over $44,000... $1,924.00, plus 7.2% of excess over $38,000
25 Over $44,000 but not over $50,000... $2,356.00, plus 7.5% of excess over $44,000
26 Over $50,000 but not over $60,000... $2,806.00, plus 7.9% of excess over $50,000
27 Over $60,000 but not over $70,000... $3,596.00, plus 8.2% of excess over $60,000
28 Over $70,000 but not over $80,000... $4,416.00, plus 8.6% of excess over $70,000
29 Over $80,000 but not over $90,000... $5,276.00, plus 8.8% of excess over $80,000
30 Over $90,000 but not over $100,000... $6,156.00, plus 9.1% of excess over $90,000
31 Over $100,000 but not over $150,000 $7,066.00, plus 9.3% of excess over $100,000
32 Over $150,000 but not over $200,000 $11,716.00, plus 9.5% of excess over $150,000
33 Over $200,000....................... $16,466.00, plus 9.6% of excess over $200,000
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If the West Virginia taxable
income is:
The tax is:
Not over $4,000 ...... , ............. .. 2.1% of the taxable income
Over $4,000 but not over $8,000 ...... $84.00, plus 2.3% of excess of over $4,000
Over $8,000 but not over $12,000 . .... $176.00, plus 2.8% of excess of over $8,000
Over $12,000 but not over $16,000 .... $288.00, plus 3.2% of excess over $12,000
Over $16,000 but not over $20,000 .... $416.00, plus 3.5% of excess over $16,000
Over $20,000 but not over $24,000 ... . $556.00, plus 4.0% of excess over $20,000
Over $24,000 but not over $28,000 ... . $716.00, plus 4.6% of excess over $24,000
Over $28,000 but not over $32,000 ... . $900.00, plus 4.9% of excess over $28,000
Over $32,000 but not over $36,000 .... $1,096.00, plus 5.3% of excess over $32,000
Over $36,000 but not over $40,000 .... $1,308.00, plus 5.4% of excess over $36,000
Over $40,000 but not over $44,000 .. . . $1,524.00, plus 6.0% of excess over $40,000
Over $44,000 but not over $52,000 . ... $1,764.00, plus 6.1% of excess over $44,000
Over $52,000 but not over $64,000 .. . . $2,252.00, plus 6.5% of excess over $52,000
Over $64,000 but not over $76,000 .. .. $3,032.00, plus 6.8% of excess over $64,000
Over $76,000 but not over $88,000 .. . . $3,848.00, plus 7.2% of excess over $76,000
Over $88,000 but not over $100,000 . . . $4,712.00, plus 7.5% of excess over $88,000
Over $100,000 but not over $120,000 . . $5,612.00, plus 7.9% of excess over $100,000
Over $120,000 but not over $140,000 . . $7,192.00, plus 8.2% of excess over $120,000
Over $140,000 but not over $160,000 .. $8,832.00, plus 8.6% of excess over $140,000
Over $160,000 but not over $180,000 .. $10,552.00, plus 8.8% of excess over $160,000
Over $180,000 but not over $200,000 .. $12,312.00, plus 9.1 % of excess over $180,000
Over $200,000 but not over $300,000 .. $14,132.00, plus 9.3% of excess over $200,000
Over $300,000 but not over $400,000 .. $23,432.00, plus 9.5% of excess over $300,000
Over $400,000 ......... . ......... .. .. $32,932.00, plus 9.6% of excess over $400,000

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<th>Income Range</th>
<th>Tax Rate</th>
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<td>Not over $2,000</td>
<td>2.1% of taxable income</td>
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<tr>
<td>Over $2,000 but not over $4,000</td>
<td>42.00, plus 2.3% excess</td>
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<tr>
<td>Over $4,000 but not over $6,000</td>
<td>88.00, plus 2.8% excess</td>
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<td>Over $6,000 but not over $8,000</td>
<td>144.00, plus 3.2% excess</td>
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<td>Over $8,000 but not over $10,000</td>
<td>208.00, plus 3.5% excess</td>
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<td>Over $10,000 but not over $12,000</td>
<td>278.00, plus 4.0% excess</td>
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<td>Over $12,000 but not over $14,000</td>
<td>358.00, plus 5.3% excess</td>
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<td>Over $14,000 but not over $16,000</td>
<td>464.00, plus 5.9% excess</td>
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<td>Over $16,000 but not over $18,000</td>
<td>582.00, plus 6.8% excess</td>
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<td>Over $18,000 but not over $20,000</td>
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<td>Over $20,000 but not over $22,000</td>
<td>866.00, plus 8.2% excess</td>
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<td>Over $22,000 but not over $24,000</td>
<td>1,030.00, plus 9.2% excess</td>
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<td>Over $24,000 but not over $26,000</td>
<td>1,398.00, plus 10.5% excess</td>
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<td>Over $26,000 but not over $28,000</td>
<td>1,836.00, plus 11.6% excess</td>
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<td>Over $28,000 but not over $30,000</td>
<td>2,374.00, plus 12.6% excess</td>
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<td>Over $30,000 but not over $32,000</td>
<td>2,982.00, plus 13.6% excess</td>
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<td>Over $32,000 but not over $34,000</td>
<td>3,660.00, plus 14.5% excess</td>
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<td>Over $34,000 but not over $36,000</td>
<td>4,398.00, plus 15.4% excess</td>
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<td>5,206.00, plus 16.3% excess</td>
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<td>Over $38,000 but not over $40,000</td>
<td>6,104.00, plus 17.2% excess</td>
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<td>Over $40,000 but not over $42,000</td>
<td>7,102.00, plus 18.1% excess</td>
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<td>Over $42,000 but not over $44,000</td>
<td>8,200.00, plus 19.0% excess</td>
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<td>9,398.00, plus 19.9% excess</td>
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<td>Over $58,000 but not over $60,000</td>
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<td>Over $60,000 but not over $62,000</td>
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<td>Over $68,000 but not over $70,000</td>
<td>30,474.00, plus 30.7% excess</td>
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<td>Over $70,000 but not over $72,000</td>
<td>32,872.00, plus 31.6% excess</td>
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<td>Over $72,000 but not over $74,000</td>
<td>35,370.00, plus 32.5% excess</td>
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<td>Over $74,000 but not over $76,000</td>
<td>37,968.00, plus 33.4% excess</td>
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<td>52,458.00, plus 37.9% excess</td>
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<td>55,556.00, plus 38.8% excess</td>
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<td>58,654.00, plus 39.7% excess</td>
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<td>61,752.00, plus 40.6% excess</td>
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<td>Over $92,000 but not over $94,000</td>
<td>64,850.00, plus 41.5% excess</td>
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<td>67,948.00, plus 42.4% excess</td>
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<td>Over $96,000 but not over $98,000</td>
<td>71,046.00, plus 43.3% excess</td>
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<td>Over $98,000 but not over $100,000</td>
<td>74,144.00, plus 44.2% excess</td>
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<td>Over $100,000 but not over $150,000</td>
<td>10,744.00, plus 13.0% excess</td>
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<td>Over $150,000 but not over $200,000</td>
<td>17,244.00, plus 13.0% excess</td>
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<td>Over $200,000</td>
<td>23,744.00, plus 13.0% excess</td>
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<td>Income Range</td>
<td>Tax Rate and Calculation</td>
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<tr>
<td>Not over $2,000</td>
<td>2.1% of taxable income</td>
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<td>Over $2,000 but not over $4,000</td>
<td>$42.00, plus 2.3% excess</td>
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<td>Over $18,000 but not over $20,000</td>
<td>$676.00, plus 6.6% excess</td>
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<td>Over $20,000 but not over $22,000</td>
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<td>Over $22,000 but not over $26,000</td>
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<td>Over $26,000 but not over $32,000</td>
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<td>$1,854.00, plus 10.4% excess</td>
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<td>$3,162.00, plus 11.6% excess</td>
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<td>$6,188.00, plus 13.0% excess</td>
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<td>$10,088.00, plus 13.0% excess</td>
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<td>$16,588.00, plus 13.0% excess</td>
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<tr>
<td>Over $200,000</td>
<td>$23,088.00, plus 13.0% excess</td>
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<tr>
<td>Income Range</td>
<td>Tax Rate</td>
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<tr>
<td>Not over $4,000</td>
<td>2.1% of taxable income</td>
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<tr>
<td>Over $4,000 but not over $8,000</td>
<td>2.8% of excess over $4,000</td>
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<tr>
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<td>5.5% of excess over $44,000</td>
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<td>6.0% of excess over $52,000</td>
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<td>6.5% of excess over $64,000</td>
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<td>12.5% of excess over $360,000</td>
</tr>
<tr>
<td>Over $400,000</td>
<td>13.0% of excess over $400,000</td>
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§11-21-4e. Effect of rate changes during taxable year.

(a) If any rate of tax imposed by this article changes to become effective after the thirty-first day of December, of a calendar year, and if the taxable year includes the effective date of the change of rate (unless that date is the first day of the taxable year) then: (1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change of rate, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of months in each period bears to the number of months in the entire taxable year.

(b) For purposes of subsection (a):

(1) If the rate changes for taxable years “beginning after” or “ending after” a certain date, the following day shall be considered the effective date of the change; and

(2) If a rate changes for taxable years “beginning on or after” a certain date, that date shall be considered the effective date of the change of rate.

§11-21-16. West Virginia personal exemptions of resident individual.

(a) General.—For any tax imposed under the provisions of this article with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, a resident individual shall be allowed a West Virginia exemption of six hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars; and with respect to any taxable year beginning on or after the first...
day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars.

(b) Husband and wife.—If the West Virginia income taxes of a husband and wife are separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled, with respect to any taxable year prior to the first day of January, one thousand nine hundred eighty-three, to a West Virginia exemption of six hundred dollars for each federal exemption to which he would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns. With respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-three, and prior to the first day of January, one thousand nine hundred eighty-four, said exemption shall be seven hundred dollars; and with respect to any taxable year beginning on or after the first day of January, one thousand nine hundred eighty-four, said exemption shall be eight hundred dollars.

§11-21-71. Requirement of withholding tax from wages.

(a) General.—Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee. This section shall not apply to payments by the United States for service in the armed forces of the United States.

(b) Withholding exemptions.—For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal
income tax withholding purposes. An employer may rely
upon the number of federal withholding exemptions
claimed by the employee, except where the employee claims
a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year prior to the first day
of January, one thousand nine hundred eighty-three, the
amount of each West Virginia exemption shall be six
hundred dollars whether the individual is a resident or
nonresident. With respect to any taxable year beginning on
or after the first day of January, one thousand nine hundred
eighty-three, and prior to the first day of January, one
thousand nine hundred eighty-four, said exemption shall
be seven hundred dollars and with respect to any taxable
year beginning on or after the first day of January, one
thousand nine hundred eighty-four, said exemption shall be
eight hundred dollars.

(c) Exception for certain nonresidents.—If the income
tax law of another state of the United States or of the
District of Columbia results in its residents being allowed a
credit under section forty sufficient to offset all taxes
required by this article to be withheld from the wages of an
employee, the tax commissioner may by regulation relieve
the employers of such employees from the withholding
requirements of this article with respect to such employees.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-4. Imposition of primary tax and rate thereof; imposi-
tion of additional, temporary surtax; effective and termina-
tion dates.

§11-24-4a. Effect of rate change during taxable year.

§11-24-9. Credits against primary tax; election of taxpayer.

§11-24-10. Credit for hiring of qualified employees by eligible taxpayers
engaged in-manufacturing.

§11-24-17a. Interest and additions to tax on payments of estimated tax.

§11-24-4. Imposition of primary tax and rate thereof; im-
position of additional temporary surtax; ef-
cfective and termination dates.

(a) Primary tax.

(1) In the case of taxable periods beginning after the
thirtieth day of June, one thousand nine hundred sixty-
seven, and ending prior to the first day of January, one
thousand nine hundred eighty-three, a tax is hereby
imposed for each taxable year at the rate of six percent
per annum on the West Virginia taxable income of every
domestic or foreign corporation engaging in business in this
state or deriving income from property, activity or other
sources in this state, except corporations exempt under
section five.

(2) In the case of taxable periods beginning on or after
the first day of January, one thousand nine hundred eighty-
three, a tax is hereby imposed for each taxable year on the
West Virginia taxable income of every domestic or foreign
corporation engaging in business in this state or deriving
income from property, activity or other sources in this state,
except corporations exempt under section five, at the rates
which follow:

(A) On taxable income not in excess of fifty thousand
dollars, the rate of six percent; and

(B) On taxable income in excess of fifty thousand
dollars, the rate of seven percent.

(b) Temporary surtax.—In addition to the primary tax
imposed, determinable and with exemptions, as aforesaid,
there is hereby imposed an additional tax, a temporary
surtax, of fifteen percent of the determined primary tax
liability (as determined prior to application of any credits
allowable under section nine of this article), and with such
additional, temporary surtax being hereby made effective
and applicable to taxable years or portions thereof
beginning on and after the first day of January, one
thousand nine hundred eighty-three, with such additional,
temporary surtax to expire, be nullified and be of no further
force or effect whatsoever after the thirtieth day of June,
one thousand nine hundred eighty-five. Section four-a of
this article, applicable to the effect of any rate changes
during a taxable year, shall be construed to include and also
be applicable to this surtax or any change of such surtax
hereafter occurring during a taxable year. Corporations
exempt under section five of this article from the primary
tax, as imposed, are hereby made exempt from the
additional, temporary surtax, as imposed.

§11-24-4a. Effect of rate changes during taxable year.

(a) If any rate of tax imposed by this article changes to
become effective after the thirty-first day of December of a
calendar year, and if the taxable year included the effective
date of the change of rate (unless that date is the first day of
the taxable year) then: (1) Tentative taxes shall be
computed by applying the rate for the period before the
effective date of the change of rate, and the rate for the
period on and after such date, to the taxable income for the
entire taxable year; and (2) the tax for such taxable year
shall be the sum of that proportion of each tentative tax
which the number of months in each period bears to the
number of months in the entire taxable year.

(b) For purposes of subsection (a):
(1) If the rate changes for taxable years "beginning
after" or "ending after" a certain date, the following day
shall be considered the effective date of the change; and
(2) If a rate changes for taxable years "beginning on or
after" a certain date, that date shall be considered the
effective date of the change of rate.

§11-24-9. Credits against primary tax; election of taxpayer.
(a) Credit for primary taxes imposed under article
thirteen, chapter eleven of this code.—A credit shall be
allowed against the primary 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
fifty percent of the primary tax liability of the taxpayer
under 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 fifty percent of the primary tax liability of the
taxpayer under this article for such taxable year: Provided,
however, That the entire amount of the business and
occupation tax liability of the taxpayer, which was taken as
a deduction in determining its federal taxable income for
the taxable year, shall be an adjustment increasing federal
taxable income under section six of this article: Provided
further, That the taxpayer may at its option elect in lieu of
claiming the credit allowable by this subsection, to not
increase its federal taxable income under section six of this
article and thereby take as a full deduction under this
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 primary 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 fifty percent of the primary tax liability of the taxpayer under 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 fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the carrier income tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its carrier income tax liability for the taxable year, which was taken as a deduction on its federal return for the taxable year.

§11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.

(a) A credit shall be allowed under the provisions of this section against the primary tax liability of the taxpayer under this article to eligible taxpayers who hire qualified
employees during the period beginning April first, one
thousand nine hundred eighty-three, and ending December
thirty-first, one thousand nine hundred eighty-four.

(b) For the purpose of this section, the term “eligible
taxpayer” shall mean a taxpayer who:

(1) Is subject to tax liability under section two-b, article
thirteen, chapter eleven of this code, relating to business and
occupation tax upon the business of manufacturing, com-
pounding or preparing for sale any articles, substances or
commodities; and

(2) Hires a qualified employee, as defined herein, during
the period beginning April first, one thousand nine hundred
eighty-three, and ending December thirty-first, one
thousand nine hundred eighty-four; which employee to
such employer is not a returning seasonal employee or
employee of like-type.

(c) For the purpose of this section, the term “qualified
employee” shall mean an employee who is hired and
employed at a location within this state by an eligible
taxpayer for full-time employment, which, for the purposes
of this section, shall mean employment for at least one
hundred twenty hours per month at a wage equal to, or
greater than, the prevailing federal minimum wage and:

(1) At the time he or she is hired, has either exhausted
entitlement to unemployment compensation benefits under
the provisions of chapter twenty-one-a of this code or
would have exhausted such benefits within a period of six
weeks from date of employment; or

(2) At the time of employment, he or she is hired so that
one or more present employees will not be required to
continue working overtime, and with a resultant decrease
in the amount of overtime compensation paid by the
employer.

(d) The term “qualified employee” shall not include a
person who displaces an employed individual, other than an
individual who is discharged for cause, or shall not include
an individual employed and who is closely related to a
person who owns, directly or indirectly, more than fifty
percent of the outstanding stock of the business, or an
individual employed and who is closely related to the owner or owners of an unincorporated business.

(e) Notwithstanding any provision of this code to the contrary, the department of employment security shall disclose, upon request, to the state tax commissioner or his employees, any wage, benefits or eligibility information with respect to an identified individual which is contained in its records.

(f) The maximum total credits allowed to any eligible taxpayer in all taxable years because of the hiring of any one qualified employee shall be one thousand dollars: Provided, That the amount of the credit allowed by this section in any one taxable year shall be the lesser of either one thousand dollars for each qualified employee hired in such taxable year, or ten percent of the gross wages paid by the eligible taxpayer to each qualified employee hired in such taxable year: Provided, however, That unused credit for an eligible employee may be carried forward to the next tax year if necessary and until the lesser of either one thousand dollars for each qualified employee or ten percent of the gross wages paid to the eligible employee during his or her first employment year is taken as a credit by the eligible taxpayer. The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article, and any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

§11-24-17a. Interest and additions to tax on payments of estimated tax.

1 The interest provisions of subsection (a), section seventeen, and the additions to tax provisions of section eighteen, both of article ten of this chapter, shall apply to an underpayment of estimated tax under this article, whether such underpayment is because of a failure to pay the entire installment payment then due or because of an underestimation by more than twenty percent of the amount of tax due for the taxable year under this article.
AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to business and occupation tax; allowing a deduction from gross income for employer contribution to a qualified employee stock ownership plan by a manufacturer.

Be it enacted by the Legislature of West Virginia:

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-a, to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3a. Deduction for contributions to an employee stock ownership plan by a manufacturer.

1 (a) General rule.—There shall be allowed as a deduction from gross income reportable under section two-b of this article, for the taxable year, the amount of qualified contribution to an employee stock ownership plan made during the taxable year, for any period beginning after the thirtieth day of June, one thousand nine hundred eighty-three.

(b) Definitions.—For purposes of this section the term:

10 (1) “Employee stock ownership plan” means a plan as defined in paragraph (7), subsection (e), section 4975 of the Internal Revenue Code.

13 (2) “Internal Revenue Code” means the Internal Revenue Code of 1954, as amended, which is codified as Title 26 of the United States Code.
(3) "Qualified contribution" means the amount of employer contributions during the taxable year to an employee stock ownership plan, which are deductible by the corporation for federal income tax purposes under paragraph (10), subsection (a), section 404 of the Internal Revenue Code, and which do not exceed the amount allowable under paragraph (6), subsection (c), section 415 of the Internal Revenue Code.

CHAPTER 178

(5. B. 536—By Mr. McGraw, Mr. President)

[Passed March 11, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-e; and to amend said chapter eleven by adding thereto a new article, designated article thirteen-e, all relating generally to the credit against business and occupation taxes for eligible investment in new or expanded or revitalized coal loading facilities; authorizing issuance of regulations; stating legislative findings and purpose; defining terms; allowing credit for eligible investment in coal loading facilities; defining eligible investment in coal loading facilities; and providing for forfeiture and recapture of credit.

Be it enacted by the Legislature of West Virginia:

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-e; and that said chapter eleven be amended by adding thereto a new article, designated article thirteen-e, all to read as follows:

Article


13E. Business and Occupation Tax Credit for Coal Loading Facilities.
ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3e. Tax credit for coal loading facilities; regulations.

(a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-e of this chapter, relating to tax credit for new or expanded or revitalized coal loading facilities.

(b) The tax commissioner may prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-e of this chapter.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.

§11-13E-1. Legislative findings and purpose.

The Legislature finds that production of coal is very important to the economy of this state, and that a sound economy 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, through the construction of new or the expansion or revitalization of existing coal loading facilities, and thereby increase employment and economic development, there is hereby provided a business and occupation tax credit for investment in coal loading facilities.


(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 purposes of this article, the term:

(1) "Coal loading facility" means any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility, or from a coal storage facility, or both, or from any means of transportation, to any means of rail or barge transportation.
used to move coal, including such land as is directly associated with and solely used for the coal loading facility, and including any device or combination of machinery and equipment that is directly associated with and solely used for the loading of coal. This definition applies only when the transfer is to any means of rail or barge transportation and specifically excludes the transfer to any other form of transportation. This may include, but is not limited to, the coal loading tipple, conveyors, coal storage facilities, weighing equipment and rail trackage, if they are directly associated with and solely used for the loading of coal. In no event may the eligible investment in a coal loading facility, for purposes of this credit, include the cost of any coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, even though physically a part of the coal loading facility, and even though such coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, is necessary or essential to the loading of commercially usable or marketable coal.

(2) "Eligible taxpayer" means any person subject to tax under article thirteen of this chapter who purchases real or personal property, or a combination thereof, for the purpose of building or constructing a new or expanded coal loading facility in this state, or who revitalizes an existing coal loading facility which was located in this state on the first day of April, one thousand nine hundred eighty-three, and upon completion, operates the new or expanded or revitalized coal loading facility.

(3) "Revitalization" means capital investment in a coal loading facility located in this state on the first day of April, one thousand nine hundred eighty-three, to replace or modernize buildings, structures, equipment, machinery and other tangible personal property directly associated with and solely used in the operation of a coal loading facility, including the acquisition of any real property directly associated with and solely used in the operation of a revitalized coal loading facility.

(4) "Property purchased for a coal loading facility" means real property and improvements thereto, and tangible personal property, but only if such real or personal
property is constructed or purchased for use as a component part of a new or expanded coal loading facility, or the revitalization of an existing coal loading facility which was located within this state on the first day of April, one thousand nine hundred eighty-three. 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 articles 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 a coal loading facility, shall be included within this definition.

“Property purchased for a coal loading facility” shall not include:

(A) Property which qualifies or was qualified for credit under articles thirteen-c or thirteen-d of this chapter.

(B) Repair costs, including materials used in making the repair, unless under generally accepted accounting principles the cost of the repair must be capitalized and not expensed.

(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 April, one thousand nine hundred eighty-three. 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 April or such property was constructed, reconstructed, erected or acquired pursuant to a written contract existing on or before the thirty-first day of March, one thousand nine hundred eighty-three, 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 thirty-first day of March, one
thousand nine hundred eighty-three, 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 thirty-first day of March, one thousand nine
hundred eighty-three.

(H) Property which is acquired incident to the purchase
of the stock or assets of a taxpayer, which property was or
had been used by the seller in his 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, or was previously designated
“property purchased for industrial revitalization” under
article thirteen-d of this chapter and used to qualify for the
tax credit provided by that article.

§11-13E-3. Amount of credit allowed for coal loading facilities.

There shall be allowed to eligible taxpayers a credit
against the business and occupation taxes imposed by
article thirteen of this chapter for investment in a new or
expanded or revitalized coal loading facility. The amount of
this credit shall be equal to ten percent of the cost of the
eligible investment made in a coal loading facility and shall
reduce the business and occupation tax imposed under
sections two-a, two-b and two-h, article thirteen of this
chapter, subject to the following conditions and limitations:

(a) 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.

(b) The amount of annual credit allowed shall not
reduce the business and occupation taxes imposed on the
business of producing coal under section two-a, article
thirteen of this chapter, the business of manufacturing,
compounding or preparing coal for sale under section two-
b, article thirteen of this chapter and on the activity of
loading coal 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.

(c) When in any taxable year the eligible taxpayer is entitled to claim credit under this article and article thirteen-c or article thirteen-d of this chapter, the total amount of credits allowed shall not exceed fifty percent of the tax liability under section two-b or two-h, article thirteen of this chapter on manufacturing or manufacturing-service activity.

(d) 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.

(e) No credit shall be allowed under this article for any property purchased for a coal loading facility prior to the first day of April, one thousand nine hundred eighty-three.

§11-13E-4. Eligible investment.

(a) General.—The eligible investment in property purchased for a new or expanded or revitalized coal loading facility shall be the applicable percentage of the cost of each property purchased for the purpose of such coal loading facility, which is placed in service or use in this state by the eligible 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 -
---|---
4 years or more but less than 6 years | 33 1/3%
6 years or more but less than 8 years | 66 2/3%
8 years or more | 100%

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, and is the period during which the property may reasonably be expected to be useful to the taxpayer as part of a coal loading facility.
(c) Cost.—For purposes of subsection (a), the cost of each property purchased for a coal loading facility 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 a coal loading facility.

(2) Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty or is stolen, 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. Lease renewals, subleases or assignments shall not be considered.

(4) Property purchased for multiple use.—The cost of property purchased for multiple business use including use as a component part of a coal loading facility business together with some other business or activity not eligible for credit under this article shall be apportioned between such businesses or activities. The amount apportioned to the activity of loading coal 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.

§11-13E-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 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 a coal loading facility by the eligible taxpayer, in this state, prior to the end of its useful life, as determined under section three of this article, 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 section three of this article to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state as a coal loading facility of the eligible taxpayer. The 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 coal loading facility.—If during any taxable year the eligible taxpayer ceases operation of a coal loading facility in this state, for which 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 redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three of this article to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a coal loading facility of the eligible taxpayer. The 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.

§11-13E-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 business as long as the property is used as or in a coal loading facility 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 coal loading 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 of this article by reason of any sale to a successor business which continues to operate the coal loading 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.

CHAPTER 179

(Com. Sub. for H. B. 1657—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed February 18, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article fifteen by adding thereto a new section, designated section eighteen; to amend and reenact section three, article fifteen-a of said chapter eleven; and to further amend said article fifteen-a by adding thereto a new section, designated section thirteen, all relating to imposing the consumers sales and service tax on sales of gasoline and special fuel, generally at the wholesale level, by distributors, importers and others, and the use tax on the use or consumption within this state of gasoline or special fuel; terminating certain exemptions and making sales taxable; defining terms; providing for sales and use tax to be imposed on the basis of specified rate applicable to the average wholesale price, converted and computed on a per gallon basis, and exclusive of state and federal gallonage taxes, with such average wholesale price to not be less than the average wholesale price of gasoline and special fuel specified on the effective
date of the bill; requiring computation of use tax liability of motor carriers to be based on such average wholesale price of gasoline and special fuel, as determined by the tax commissioner annually, and providing that in no event shall such price be less than that specified on the effective date of the bill; providing for filing of returns and payment of tax on the twenty-fifth day of the month following a taxable period; authorizing combined returns and combined payments of the taxes due under articles fourteen and fifteen, and fourteen-a and fifteen-a, chapter eleven of the code; to facilitate compliance, and for such purpose, changing to the twenty-fifth day of each month succeeding the tax period, the due dates of returns and payments of taxes imposed by articles fourteen and fourteen-a of chapter eleven of the code; dedicating revenues to the "road fund"; providing a construction clause; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section eighteen; that section three, article fifteen-a of said chapter eleven be amended and reenacted; and that said article fifteen-a be further amended by adding thereto a new section, designated section thirteen, all to read as follows:

Article
15. Consumers Sales Tax.
15A. Use Tax.

ARTICLE 15. CONSUMERS SALES TAX.


1 The following sales and services shall be exempt:

2 (1) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

3 (2) Sales of textbooks required to be used in any of the schools of this state;
(3) 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;

(4) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(5) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render. Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(6) 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. Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations and shall not apply to purchases of gasoline or special fuel;

(7) 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, 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, and shall not apply to purchases of gasoline or special fuel;

(8) 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 trans-
actions of like character by such owner or on his account by
such representatives;

(9) Sales of tangible personal property and services ren-
dered 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 to real property and sales of gasoline and special
fuel shall not be exempt;

(10) Sales of tangible personal property for the purpose
of resale in the form of tangible personal property: Provided,
That sales of gasoline and special fuel by distributors and im-
porters shall be taxable except when the sale is to another
distributor for resale;

(11) 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: Provided, That
sales of gasoline and special fuel shall be taxable;

(12) Sales and services, fire fighting, or station house equip-
ment, including construction and automotive, made to any
volunteer fire department organized and incorporated under
the laws of the state of West Virginia: Provided, That sales
of gasoline and special fuel shall be taxable;

(13) Sales of newspapers when delivered to consumers by
route carriers;

(14) Sales of drugs dispensed upon prescription and sales
of insulin to consumers for medical purposes;
(15) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;

(16) Sales and services performed by day care centers;

(17) 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;

(18) Bank safety deposit boxes;

(19) 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: Provided, That sales of gasoline and special fuel shall be taxable; and

(20) 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.


(a) General. — All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, shall be subject to the tax imposed by this article, notwithstanding any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section shall be construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. — The measure of tax on sales of
gasoline or special fuel by distributors or importers shall be the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter.

For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel herein is imposed on the average wholesale price of such gasoline and special fuel; in no case, for the purposes of taxation under this article, shall such average wholesale price be deemed to be less than ninety-seven cents per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. — For purposes of this section:

(1) "Aircraft" shall include any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

(2) "Aircraft fuel" shall mean gasoline and special fuel suitable for use in any aircraft engine.

(3) "Distributor" shall mean and include every person:

(A) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale; or

(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(C) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.

(4) "Gasoline" shall mean and include any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined, including any product obtained by blending together any one or more products, with or without other products, if the resultant product is capable of the same use.
(5) "Importer" shall mean and include every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle that is not a motor carrier.

(6) "Motor carrier" shall mean and include: (A) Any passenger vehicle which has seats for more than nine passengers in addition to the driver, any road tractor, tractor truck or any truck having more than two axles, which is operated or caused to be operated, by any person on any highway in this state using gasoline or special fuel; and (B) any aircraft, barge or other watercraft, or locomotive transporting passengers or freight in or through this state.

(7) "Motor vehicle" shall mean and include automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(8) "Retail dealer of gasoline or special fuel" shall mean and include any person not a distributor who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" shall mean and include any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" shall include products commonly known as natural or casing-head gasoline and shall include gasoline and special fuel for heating any private residential dwelling, building or other premises; but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(10) "Supply tank" shall mean any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion
of the vehicle, whether or not such tank or receptacle is
directly connected to the fuel supply line of the vehicle.

(11) "Tank wagon" shall mean and include any motor
vehicle or vessel with a cargo tank or cargo tanks ordinarily
used for making deliveries of gasoline or special fuel, or
both, for sale or use.

(12) "Taxpayer" shall mean any person liable for the
tax imposed by this article.

(13) "User" shall mean any person who purchases gaso-
line or special fuel for use or consumption.

(d) **Tax due.** — The tax on sales of gasoline and special
fuel shall be paid by each taxpayer on or before the twenty-
fifth day of each month, by check, bank draft, certified check
or money order, payable to the tax commissioner for the
amount of tax due for the preceding month, notwithstanding
any provision of this article to the contrary.

(e) **Monthly return.** — On or before the twenty-fifth
day of each month, the taxpayer shall make and file a return
for the preceding month showing such information as the tax
commissioner may require, notwithstanding any provision of
this article to the contrary.

(f) **Compliance.** — To facilitate ease of administration and
compliance by taxpayers, the tax commissioner may require
distributors, importers and other persons liable for the tax
imposed by this article on sales of gasoline or special fuel,
to file a combined return and make a combined payment of
the tax due under this article on sales of gasoline and special
fuel, and the tax due under article fourteen of this chapter,
on gasoline and special fuel. In order to encourage use of a
combined return each month and the making of a single
payment each month for both taxes, the due date of the
return and tax due under article fourteen of this chapter is
hereby changed from the last day of each month to the
twenty-fifth day of each month, notwithstanding any provision
in article fourteen of this chapter to the contrary.

(g) **Dedication of tax to highways.** — All tax collected
under the provisions of this section after deducting the amount
of any refunds lawfully paid shall be deposited in the "road
fund" in the state treasurer's office, and shall be used only
for the purpose of construction, reconstruction, maintenance
and repair of highways, and payment of principal and interest
on state bonds issued for highway purposes.

(h) Construction. — This section shall not be construed as
taxing any sale of gasoline or special fuel which this state is
prohibited from taxing under the constitution of this state or
the constitution or laws of the United States.

(i) Effective date. — The provisions of this section and
the amendments to section nine of this article shall take effect
on the first day of April, one thousand nine hundred eighty-
three.

ARTICLE 15A. USE TAX.


1 The use in this state of the following tangible personal prop-
erty is hereby specifically exempted from the tax imposed by
this article:

4 (1) All articles of tangible personal property brought into
the state of West Virginia by a nonresident individual thereof
for his or her use or enjoyment, except gasoline and special
fuel: Provided, That fuel contained in the supply tank of a
motor vehicle that is not a motor carrier shall not be taxable.

9 (2) Tangible personal property, the gross receipts from
the sale of which are exempted from the sales tax by the terms
of article fifteen, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended.

13 (3) Tangible personal property, the gross receipts from the
sale of which are derived from the sale of machinery, supplies
and materials to contractors, or to persons engaged in the
business of manufacturing, transportation, transmission, com-
munication or in the production of natural resources in this
state: Provided, That purchases of gasoline or special fuel
from distributors or importers shall be taxable.
(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, as amended.

(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.


(a) Imposition of tax.

(1) On deliveries in this state. — Gasoline or special fuel furnished or delivered within this state to consumers or users is subject to the tax rate imposed by section two of this article: Provided, That the amount of tax due under section two shall in no event be less than five percent of the average wholesale price of gasoline, and with such price to, in no case, be deemed to be less than ninety-seven cents per gallon for all gallons of gasoline and special fuel taxable under section two of this article.

(2) On purchases out of state. — An excise tax is hereby imposed on the use or consumption in this state of gasoline or special fuel purchased outside this state at the rate of five percent of the average wholesale price of such gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: Provided, That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, shall be taxed in the same manner as that in the supply tank of a motor carrier.

(b) Definitions. — Terms used in the section shall have the
same meaning as when used in a comparable context in section eighteen, article fifteen of this chapter.

(c) **Determination of average wholesale price.**

(1) To simplify determining the average wholesale price of all gasoline and special fuel, the tax commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January, annually, thereafter, determine the average wholesale price of gasoline and special fuel for each annual period, on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of gasoline and special fuel shall be given by the tax commissioner at least thirty days in advance of each first day of January, annual period, by filing notice of the average wholesale price in the state register, and by such other means as the tax commissioner deems reasonable: Provided, That notice of the average wholesale price of gasoline and special fuel for the first period shall be timely given if filed in the state register on the effective date of this section.

(2) The “average wholesale price” shall mean the single, state-wide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of gasoline or diesel fuel, as determined by the tax commissioner from information furnished by distributors of gasoline or special fuel in this state, or such other information regarding wholesale selling prices as the tax commissioner may gather, or a combination of such information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of gasoline or special fuel.

(3) All actions of the tax commissioner in acquiring data necessary to establish and determine the average wholesale price of gasoline and special fuel, in providing notification of his determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of fuel, may be made by the tax commissioner without
compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In any administrative or court proceeding brought to challenge the average wholesale price of gasoline and special fuel as determined by the tax commissioner, his determination shall be presumed to be correct and shall not be set aside unless it is clearly erroneous.

(d) Computation of tax due from motor carriers. — Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons of gasoline or special fuel used in the operation of any motor carrier within this state, under the following rules:

(1) The total amount of gasoline or special fuel used in the operation of the motor carrier within this state shall be that proportion of the total amount of gasoline and special fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under subsection (c), of all gasoline and special fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all gasoline and special fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit shall be allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.
(e) Return and payment of tax. — Tax due under this article on the use or consumption in this state of gasoline or special fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the tax commissioner, for the amount of tax due for the preceding quarter. Every taxpayer shall make and file with his remittance, a return showing such information as the tax commissioner may require.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require motor carriers liable for the taxes imposed by this article on the use of gasoline or special fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on such fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is hereby changed from the last day of January, April, July and October of each calendar year, to the twenty-fifth day of such months, notwithstanding any provision in article fourteen-a of this chapter to the contrary.

(g) Dedication of tax to highways. — All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid shall be deposited in the "road fund" in the state treasurer's office, and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes.

(h) Construction. — The tax imposed by this article on the use of gasoline or special fuel in this state shall not be construed as taxing any gasoline or special fuel which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(i) Effective date. — The provisions of this section and the
amendments to section three of this article shall take effect on the first day of April, one thousand nine hundred eighty-three.

CHAPTER 180
(S. B. 227—By Mr. McGraw, Mr. President)

[Passed March 1, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


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-three, 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-two, and thereafter, but no amendment to the laws of the United States
16 made on or after the first day of January, one thousand
17 nine hundred eighty-three, shall be given effect.

CHAPTER 181
(S. B. 484—By Mr. Nelson)

[Passed March 4, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to personal income tax exclusions; and medical certificates filed as proof of permanent and total disability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

6 (b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

12 (1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;
(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year; and

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method.
(c) Modifications reducing federal adjusted gross income.—There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty percent of such portion of the gain;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any
police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That
(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions; and

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars.

(d) Modification for West Virginia fiduciary adjustment.—There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.

(f) Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.
AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-three, 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-two, 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-three, 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.

(15) The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term “this state” means the state of West Virginia.

CHAPTER 183
(H. B. 1343—By Mr. Albright)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article three of said chapter, relating to the publication and posting of delinquent tax lists; providing for removal of names from the lists; providing a second publication of a list for delinquent lands; providing for notice by certified mail of the delinquency; allowing one certified notice to a landowner owning more than one parcel; contents of notice
provided in certain cases; and authorizing collection of costs for notification of delinquency.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Delinquency and Methods of Enforcing Payment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.


A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county commission at which they are to be presented for examination. At the same time a copy of each list 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. Only the aggregate amount of the taxes owed by each person need be published. To cover the cost of preparing, publishing and posting the delinquent lists, a charge of two dollars and fifty cents shall be added to the taxes and interest already due on each item listed.

Any person, whose taxes were delinquent on May first, may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication, by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only fifty cents if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

ARTICLE 3. SALE OF LAND FOR TAXES.

§11A-3-2. Second publication of list of delinquent real estate; notice.

On or before September tenth of each year, the sheriff shall
prepare a second list of delinquent lands, which shall include
all real estate in his county remaining delinquent as of Sep-
tember first, together with a notice of sale, in form or effect
as follows:

Notice is hereby given that the following described tracts or
lots of land or undivided interests therein in the County of
________________________ which are delinquent for the nonpayment
of taxes for the year (or years) 19______, will be offered for
sale by the undersigned sheriff (or collector) at public auction
at the front door of the courthouse of the county, between the
hours of ten in the morning and four in the afternoon, on the
________________________ day of ______________________, 19______.

Each unredeemed tract or lot, or each unredeemed part
thereof or undivided interest therein, will be sold at public
auction to the highest bidder for cash in an amount which
shall not be less than the taxes, interest and charges which
shall be due thereon to the date of sale, as set forth.

<table>
<thead>
<tr>
<th>Name of person</th>
<th>Quality</th>
<th>Local</th>
<th>Total amount of taxes, charged with taxes</th>
<th>Interest and charges due to date of sale</th>
</tr>
</thead>
</table>

Any of the aforesaid tracts or lots, or part thereof or an
undivided interest therein, may be redeemed by the payment
to the undersigned sheriff (or collector) before sale, of the
total amount of taxes, interest and charges due thereon up to
the date of redemption.

Given under my hand this ______________________ day of
________________________, 19______.

_________________________________________
Sheriff (or collector).

The sheriff shall publish the list and notice prior to the sale
date fixed in the notice 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 addition to such publication, the sheriff
shall send a notice by certified mail to the last known address
of each person whose taxes are delinquent notifying such per-
son of the delinquency: Provided, That in the case of the
owner of several parcels of property the sheriff may, at his
option, mail one notice or several notices to the owner of
several parcels of property on which taxes are delinquent. If he
elects to mail only one notice, that notice shall set forth a
legally sufficient description of all parcels of property on which
taxes are delinquent. In no event shall failure to receive the
mailed notice by the landowner affect the validity of the title of
the property conveyed if it is sold pursuant to section four,
article three, chapter eleven-a of this code.

To cover the cost of preparing and publishing the delinquent
list and mailing notice to the landowners, a charge of six dol-
liers shall be added to the taxes, interest and charges already
due on each item and other charges shall be stated in the list
as the total amount due.

Any person, whose taxes were delinquent on September
first, may have his name removed from the delinquent list prior
to the time the same is delivered to the newspapers for pub-
lication and the mailing of the above required notice by pay-
ing to the sheriff the full amount of taxes and costs owed by
such person at the date of such redemption. In such case, the
sheriff shall include but fifty cents of the costs provided in this
section in making such redemption. Costs collected by the
sheriff hereunder which are not expended for publication and
mailing shall be paid into the general county fund.

CHAPTER 184
(S. B. 174—By Mrs. Spears)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, eleven and
fifteen article six, chapter twenty-one-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 four-a; and to amend and reenact section
five-a, article nine of said chapter, all relating to unemploy-
ment compensation; disqualification for benefits; benefit rates; partial unemployment; benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, and educational institutions and governmental entities; the special administration fund; providing that for purposes of computation of unemployment compensation benefits an individual's national guard or reserve inactive duty for training shall not be considered to be employment; providing that such individual may not be considered unavailable for work; and providing that remuneration received for such training may not be deducted from the unemployment compensation benefit to which such individual is entitled.

Be it enacted by the Legislature of West Virginia:

That sections three, ten, eleven and fifteen, article six, chapter twenty-one-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 four-a; and that section five-a, article nine of said chapter be amended and reenacted, all to read as follows:

Article
6. Employee Eligibility; Benefits.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.
§21A-6-4a. National guard or reserve training not to be considered employment; such individual not unavailable for work; remuneration for training not to be deducted from unemployment compensation benefit.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.
§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-3. Disqualification for benefits.

1. Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

3. (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 such week; or for the week in which he was discharged from his last thirty-day employing unit for misconduct 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 days 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 employee of his employer; if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; arson, theft, larceny, fraud or embezzlement 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 covered employment: Provided, That for the purpose of this subdivision 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 directed 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 workers' 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 participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(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 lowest 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 section, 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.
§21A-6-4a. National guard or reserve training not to be considered employment; such individual not unavailable for work; remuneration for training not to be deducted from unemployment compensation benefit.

1 Notwithstanding any other provision of this chapter to the contrary, the following provisions apply to an individual who is a member of the state national guard or other reserve component of the United States armed forces:

2 (1) If such individual is otherwise unemployed under the provisions of this chapter, he may not be considered to be employed because he is engaged in inactive duty for training;

3 (2) Such individual may not be considered unavailable for work by reason of his inactive duty for training; and

4 (3) Remuneration which the individual receives for participating in inactive duty for training may not be deducted from the unemployment compensation benefit to which he is otherwise entitled.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in Table A in this paragraph, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of twenty-five dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.
<table>
<thead>
<tr>
<th>Wage Class (Column A)</th>
<th>Wages in Base Period (Column B)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit in Year for Total and/or Partial Unemployment (Column D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Under $700.00</td>
<td>$12.00</td>
<td>$312.00</td>
</tr>
<tr>
<td>20 1</td>
<td>700.00</td>
<td>13.00</td>
<td>338.00</td>
</tr>
<tr>
<td>21 2</td>
<td>800.00</td>
<td>14.00</td>
<td>364.00</td>
</tr>
<tr>
<td>22 3</td>
<td>900.00</td>
<td>15.00</td>
<td>390.00</td>
</tr>
<tr>
<td>23 4</td>
<td>1,000.00</td>
<td>16.00</td>
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<td>24 5</td>
<td>1,150.00</td>
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<td>1,300.00</td>
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<td>468.00</td>
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<td>494.00</td>
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<td>1,600.00</td>
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<td>520.00</td>
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<td>28 9</td>
<td>1,750.00</td>
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<td>546.00</td>
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<td>29 10</td>
<td>1,900.00</td>
<td>22.00</td>
<td>572.00</td>
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<td>30 11</td>
<td>2,050.00</td>
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<td>31 12</td>
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<td>32 13</td>
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<td>650.00</td>
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<td>33 14</td>
<td>2,500.00</td>
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<td>34 15</td>
<td>2,600.00</td>
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<td>36 17</td>
<td>2,800.00</td>
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<td>754.00</td>
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<td>37 18</td>
<td>2,900.00</td>
<td>30.00</td>
<td>780.00</td>
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<td>38 19</td>
<td>3,000.00</td>
<td>31.00</td>
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<td>39 20</td>
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<td>33.00</td>
<td>858.00</td>
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<td>41 22</td>
<td>3,350.00</td>
<td>34.00</td>
<td>884.00</td>
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<tr>
<td>42 23</td>
<td>3,500.00</td>
<td>35.00</td>
<td>910.00</td>
</tr>
<tr>
<td>43 24</td>
<td>3,650.00</td>
<td>36.00</td>
<td>935.00</td>
</tr>
</tbody>
</table>

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.
seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-one, the maximum weekly benefit rate shall be fifty percent of the average weekly wage in West Virginia.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-three, the maximum weekly benefit rate shall be fifty-five percent of the average weekly wage in West Virginia.

The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.

Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be seventy percent of the average weekly wage in West Virginia.

(2) The weekly benefit rate (Column (C) of said Table A) in each and every wage class, one through twenty-four, both inclusive (Column (A) of said Table A), shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment (Column (D) of said Table A) in each and every wage class (Column (A) of said Table A), shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount
to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-eight times the weekly benefit rate.

The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-nine, the weekly benefit rate for each wage class by rounded dollar amount shall be fifty-five percent of one fifty-second of the median dollar amount of wages in base period for such wage class except that the weekly benefit rate for classifications one through twenty shall remain unchanged, but in any case the weekly benefit rate on or after July one, one thousand nine hundred eighty-three, shall be in accordance with Table B below.

**TABLE B**

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>107</td>
<td>Under $ 1,150.00</td>
<td>Ineligible</td>
<td>$ 504.00</td>
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After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.
The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.


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 benefit 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 reference to fifteen dollars in the definition of partial unemployment 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 lowest 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.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

(1) Benefits based on service in employment as defined in subdivisions (9) and (10) of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period
between two regular terms, whether or not successive, or
during a period of paid sabbatical leave provided for in the
individual’s contract, if the individual has a contract or
contracts to perform services in any such capacity for any
institution or institutions of higher education for both such
academic years or both such terms.

(2) Benefits based on service in employment defined in
subdivisions (9) and (10) of the definition of “employment”
in section three, article one of this chapter, shall be payable
in the same amount, on the same terms and subject to the
same conditions as benefits payable on the basis of other
service subject to this act, except that:

(a) With respect to service performed after December
thirty-one, one thousand nine hundred seventy-seven, in an
instructional, research, or principal administrative
capacity for an educational institution, benefits shall not be
paid based on such services for any week of unemployment
commencing during the period between two successive
academic years, or during a similar period between two
regular but not successive terms, or during any holiday or
vacation period, or during a period of paid sabbatical leave
provided for in the individual’s contract, to any individual
if such individual performs such services in the first of such
academic years (or terms) or prior to the beginning of such
holiday or vacation period and if there is a contract or a
reasonable assurance that such individual will perform
services in any such capacity for any educational institution
in the second of such academic years or terms or after such
holiday or vacation period: Provided, That subsection (1) of
this section shall apply with respect to such services prior to
January one, one thousand nine hundred seventy-eight;

(b) With respect to services performed after April one,
one thousand nine hundred eighty-three, in any other
capacity for an educational institution, benefits shall not be
paid on the basis of such services to any individual for any
week which commences during any holiday or vacation
period, or during a period between two successive academic
years or terms if such individual performs such services in
the first of such academic years or terms or prior to the
beginning of such holiday or vacation period and there is a
reasonable assurance that such individual will perform
such services in the second of such academic years or terms
or after such holiday or vacation periods, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

There is hereby created in the state treasury a fund to be known as the employment security special administration fund, which shall consist of interest collected on delinquent payments pursuant to section seventeen, article five of this chapter. The moneys deposited with this fund are hereby appropriated and made available to the order of the commissioner for the purpose of (a) replacements in the employment security administration fund as provided in section eight of this article, (b) to meet special, extraordinary, and contingent expenses not provided for in the employment security administration fund, and (c) refunds pursuant to section nineteen of article five, of interest erroneously collected, and (d) cover expenditures for which federal funds have been authorized but not yet received, subject to repayment to the fund. This fund shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury. Balances to the credit of the special administration fund shall not lapse at any time but shall be continuously available to the commissioner for expenditures consistent with this chapter: Provided, That (1) not more than five hundred thousand dollars shall be expended from said fund in any fiscal year; (2) that at the beginning of each calendar quarter the commissioner shall estimate the amount that may be required in that quarter for refunds of interest erroneously collected; (3) that thereupon the excess, if any, over the amounts provided to be expended under this section shall be paid into the unemployment compensation trust fund.
AN ACT to amend and reenact section six, article eleven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unfair trade practices; how retailer cost is determined; and providing for increase in wholesale markup cost for doing business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. UNFAIR TRADE PRACTICES.


(a) The term “cost” when applicable to the business of retailer shall mean bona fide cost and shall mean (i) the invoice cost of the article, product or item of merchandise to the retailer or the replacement cost thereof to the retailer within thirty days prior to the date of sale, offer for sale or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts, except customary discounts for cash, and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product or item of merchandise, but which freight charges shall not be construed as including cartage to retail outlet if done or paid for by the retailer;

(2) A markup to cover, in part, the cost of doing business, which markup in the absence of proof of a lesser cost, shall be seven percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges.
(b) The term "cost" when applicable to the business of a wholesaler shall mean bona fide cost and shall mean
(i) the invoice cost of the merchandise to the wholesaler plus applicable taxes, or the replacement cost of the merchandise to the wholesaler within thirty days prior to the date of sale, offer for sale or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts except customary discounts for cash and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product or item of merchandise, but which freight charges shall not be construed as including cartage to the retail outlet if done or paid for by the wholesaler;

(2) A markup to cover, in part, the cost of doing business, which markup in the absence of proof of a lesser cost, shall be four percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges.

CHAPTER 186

[Com. Sub. for S. B. 117—By Mr. McGraw, Mr. President, Mr. Boettner, Mr. Nelson, Mr. Tonkovich, Mrs. Lucht, Mrs. Chace, Mr. Craig, Mrs. Spears, Mr. Holliday, Mr. Chernenko, Mr. Loehr, Mr. Heck, Mr. Burdette, Mr. Holmes, Mr. Cook, Mr. Sacco, Mr. Kaufman, Mr. Chafin, Mr. Jones and Mr. Stacy]

[Passed March 12, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven; to amend and reenact sections one and seven, article one, chapter twenty-four of said code; to amend and reenact sections three, four-a, four-b and eleven, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections four-c and sixteen; to amend and reenact sections two and seven, article
three of said chapter; to further amend said article by add-
ing thereto two new sections, designated sections three-a and
eight; and to amend said chapter by adding thereto two new
articles, designated articles two-a and two-b, all relating to
corporate net income tax; credit for reducing electric and
natural gas utility rates for low-income residential
customers; legislative purpose and policy of the public
service commission; regulation of utilities and the powers,
duties and authority of the public service commission with
respect thereto; open meetings of the commission and exceptions thereto; audits and investigations of utility
management practices; requiring that the commission
review transactions between utilities and their affiliates;
limiting the amount of profit a utility may realize to just and
reasonable amounts, when considering the income of an
affiliate; holding rate hearings within the area served by the
public utility; written reports incorporated into rate
applications; procedures for changing rates of electric and
telephone cooperatives and municipally operated public
utilities; notice to the customers of all such cooperatives and
municipal utilities of impending rate changes; removing
such utilities and cooperatives from the authority of the
public service commission for limited purposes; permitting
the commission to allow emergency rates to take effect upon
petition by such municipal utilities and electric and
telephone cooperatives under certain circumstances and
conditions; limitations upon and procedures for rate
increases for natural gas public utilities as a result of the
purchase by such utility of natural gas from its suppliers; the
burden of proof upon such utilities in such cases; the powers
and duties of the commission with respect thereto and
requiring the commission to promulgate certain rules and
regulations with respect to such cases; requiring such utility
to present certain evidence in all such cases; purchase cost
adjustment increases for gas utilities purchasing more than
fifty percent of their gas from affiliates; the transportation of
natural gas by intrastate and interstate gas pipelines and
local distribution companies; requiring certificates of
convenience and necessity in certain cases with respect
thereto; providing that certain anticompetitive clauses in
natural gas purchase and sale contracts are prohibited and
the authority of the commission with respect to determining
the reasonableness of such contracts; providing for reduced rates for low income residential customers of gas and electric utilities during certain months of the year; establishing rules for persons qualifying for such low rates and for proving one's eligibility therefor; providing a system for the recovery by the utility for the revenue deficiency resulting from such reduced rates; creating a fund to be administered by the auditor designated the "Low Income Residential Utility Assistance Fund" to be used to defray such deficiencies and providing for legislative appropriation into such fund; authorizing the state auditor to accept in the name of the fund, gifts, donations, contributions, bequests of money or securities; providing for the transfer of certain funds allocated to the low income energy assistance program to be transferred into such fund; establishing procedures for taxpayers receiving an income tax refund to dedicate a certain portion of such refund for payment into such fund; establishing certain rules for the apportionment of such fund among the several utilities; temporary suspension of natural gas rate increases and exceptions thereto; emergency rate increases during period of temporary suspension; amending the provisions relating to the prohibition of discrimination with respect to rates charged by utilities to permit the commission to authorize rate designs consistent with the provisions of article two-a of said chapter; providing for the designation of intrastate gas pipelines, local distribution companies and certain interstate gas pipelines having excess or unused capacity as intrastate common carriers; providing by rule or order of the commission to require such pipelines or companies to transport natural gas sold to, used or produced by any person for designated uses; providing for rates and charges therefor; exempting certain lines; providing a severability clause; requiring the commission to impose certain conditions upon utilities who have filed for a permit to abandon service as a condition of such abandonment; and limiting deposits of residential customers of public utilities to one twelfth of the estimated annual charge.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, 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
eleven; that sections one and seven, article one, chapter twenty-four of said code be amended and reenacted; that sections three, four-a, four-b and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections four-c and sixteen; that sections two and seven, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections three-a and eight; and that said chapter be amended by adding thereto two new articles, designated articles two-a and two-b, all to read as follows:

Chapter
11. Taxation.

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11. Credit for reducing electric and natural gas utility rates for low-income residential customers.

1 (a) General.—A credit shall be allowed under the provisions of this section against the primary tax liability of the eligible taxpayer under this article, for the cost of providing electric or natural gas utility service, or both, at reduced rates to qualified low-income residential customers during the preceding heating season.

7 (b) Definitions.—For purposes of this section the term:

8 (1) “Eligible taxpayer” means a utility which provides electric or natural gas service, or both, to qualified low-income residential customers at special reduced rates ordered by the public service commission of West Virginia pursuant to the authority of section one, article two-a, chapter twenty-four of this code.

14 (2) “Cost incurred by the public utility” means the difference between actual utility charges to qualified low-income residential customers under the special reduced rate schedule and what those charges would have been if the special reduced rate schedule had not applied.

19 (3) “Cost of providing reduced rate electric or natural gas utility service” means the amount certified by the public service commission of West Virginia under the
provisions of article two-a, chapter twenty-four of this code, as the cost incurred by the public utility in providing reduced special rates for electric or natural gas utility service to qualified low-income residential customers during the preceding heating season, as required by section one, article two-a, chapter twenty-four of this code.

(4) “Preceding heating season” means the period November, December, January, February and March of the fiscal year ending on the thirtieth day of June.

(5) “Qualified low-income residential customers” means those utility customers lawfully receiving reduced rate electric or natural gas utility service, or both, under section one, article two-a, chapter twenty-four of this code, at a residence located in this state.

(6) “Special reduced rates” means the rates ordered by the public service commission of West Virginia under authority of section one, article two-a, chapter twenty-four of this code.

(c) When credit may be taken—An eligible taxpayer may claim credit for the cost of providing reduced rate electric or natural gas utility service, or both, on its annual return for the taxable year in which it receives certification of the amount thereof from the public service commission of West Virginia.

(d) Application of credit—The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article, and any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

(e) Copy of certification letter—A copy of the certification from the public service commission of West Virginia, shall be attached to the annual return under this article, on which the credit allowed by this section is taken.
CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article
2. Powers and Duties of Public Service Commission.
2A. Reduced Rates for Low-income Residential Customers of Electricity and Gas.
2B. Temporary Suspension of Rate Increases.
3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.
§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

1 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

1 (1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

1 (2) Provide the availability of adequate, economical and reliable utility services throughout the state;

1 (3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

1 (4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter, and based primarily on the costs of providing these services; and

1 (5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises.
(b) The Legislature creates the public service commission to exercise the legislative powers delegated to it. The public service commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the public service commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the public service commission. To aid in the achievement of this policy, the public service commission annually shall present to the joint committee on government and finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

1. The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

2. Important policy decisions reached and initiatives undertaken during the year;

3. The current balance of supply and demand for natural gas and electric utility services in the state and a forecast of the probable balance for the next ten years; and
(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the public service commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty, upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells, their probable extent of future production and the reasons given and any justification for, capping off or shutting in such wells, the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty,
the public service commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the public service commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the public service commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the public service commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough
scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries. Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the public service commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the public service commission of the joint committee on government and finance in a final report dated February, one thousand nine hundred seventy-nine, and entitled “A Plan for Regulatory Reform and Management Improvement.”

The commission shall before the fifth day of January, one thousand nine hundred eighty, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than the thirty-first day of December, one thousand nine hundred eighty. Certified copies of such order and rule shall be filed on the first day of the regular session of the Legislature, one thousand nine hundred eighty, by the chairman of the commission with the clerk of each house of the Legislature, the governor and the secretary of state. The chairman of the commission shall also file with the office of the secretary of state the receipt of the clerk of each house and of the governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.

Within the limits of funds appropriated therefor, the rule of the public service commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of
the Legislature adopted prior to adjournment sine die of the
regular session of the Legislature to be held in the year one
thousand nine hundred eighty: Provided, That if such rule
is approved in part and disapproved in part by a concurrent
resolution of the Legislature adopted prior to such
adjournment, such rule shall be effective to the extent and
only to the extent that the same is approved by such
concurrent resolution.

The rules promulgated and made effective pursuant to
this section shall be effective notwithstanding any other
provisions of this code for the promulgation of rules or
regulations.

(g) The public service commission is hereby directed to
cooperate with the joint committee on government and
finance of the Legislature in its review, examination and
study of the administrative operations and enforcement
record of the railroad safety division of the public service
commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for
natural gas charged to customers of all classes have risen
dramatically in recent years to the extent that such
increases have adversely affected all customer classes. The
Legislature further finds that it must take action necessary
to mitigate the adverse consequences of these dramatic rate
increases.

(2) The Legislature further finds that the practices of
natural gas utilities in purchasing high-priced gas supplies,
in purchasing gas supplies from out-of-state sources when
West Virginia possesses abundant natural gas, and in
securing supplies, directly or indirectly by contractual
agreements including take-or-pay provisions, indefinite
price escalators, or most-favored nation clauses have
contributed to the dramatic increase in natural gas prices. It
is therefore the policy of the Legislature to discourage such
purchasing practices in order to protect all customer
classes.

(3) The Legislature further finds that it is in the best
interests of the citizens of West Virginia to encourage the
transportation of natural gas in intrastate commerce by
interstate or intrastate pipelines or by local distribution
companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to confuse consideration of a proper rate of return calculation. The Legislature therefore finds that it is imperative that the public service commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on transactions with sister utilities.

§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.

1 The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter, including rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful: Provided, That no such rule or regulation shall be effective unless promulgated pursuant to the provisions of sections one through ten, article three, chapter twenty-nine-a of this code: Provided, however, That no such rule or regulation shall become effective until sixty days after its final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code. In the investigations, preparations and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it.
Meetings of the commission wherein the sole purpose is to decide or deliberate toward a decision on any matter are exempt from the requirements of article nine-a, chapter six of this code, any other provision of this code to the contrary notwithstanding.

All orders of the commission shall set forth separately findings of facts and conclusions of law, which findings of fact shall make specific reference to the evidence in the record which supports such findings.

The commission shall have a seal bearing the following inscription: "The Public Service Commission of West Virginia." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-3. General power of commission with respect to rates.
§24-2-4b. Procedures for changing rates of electric and telephone cooperatives and municipally operated water utilities.
§24-2-4c. Rate increase for natural gas public utilities relating to purchase of natural gas from suppliers.
§24-2-11. Requirements for certificate of public convenience and necessity.

§24-2-3. General power of commission with respect to rates.
1 The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities: Provided, That the commission may exercise such rate authority over municipal utilities only under the circumstances set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to
be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency and application of such audits and investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.


After the thirtieth day of June, one thousand nine hundred eighty-one, no public utility subject to this chapter except those utilities subject to the provisions of section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint
rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge the commission may either upon complaint or upon its own initiative without complaint enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, That in the case of a public utility having two thousand five hundred customers or less and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public
utility having more than five thousand customers, but not
more than seven thousand five hundred customers, and
which is not principally owned by any other public utility
corporation or public utility holding corporation, the
commission may suspend the operation of such schedule
and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than one
hundred eighty days beyond the time when such rate,
charge, classification, regulation or practice would
otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in a
proceeding initiated after the rate, charge, classification,
regulation or practice had become effective: Provided,
however, That if any such hearing and decision thereon is
not concluded within the periods of suspension, as above
stated, such rate, charge, classification, regulation or
practice shall go into effect at the end of such period not
subject to refund: Provided further, That if any such rate,
charge, classification, regulation or practice goes into effect
because of the failure of the commission to reach a decision,
the same shall not preclude the commission from rendering
a decision with respect thereto which would disapprove,
reduce or modify any such proposed rate, charge,
classification, regulation or practice, in whole or in part,
but any such disapproval, reduction or modification shall
not be deemed to require a refund to the customers of such
utility as to any rate, charge, classification, regulation or
practice so disapproved, reduced or modified. The fact of
any rate, charge, classification, regulation or practice going
into effect by reason of the commission's failure to act
thereon shall not affect the commission's power and
authority to subsequently act with respect to any such
application or change in any rate, charge, classification,
regulation or practice. Any rate, charge, classification,
regulation or practice which shall be approved,
disapproved, modified or changed, in whole or in part, by
decision of the commission shall remain in effect as so
approved, disapproved, modified or changed during the
period or pendency of any subsequent hearing thereon or
appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only.

At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

No utility may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of the next preceding paragraph of this section. The provisions of this paragraph shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia supreme court of appeals.

§24-2-4b. Procedures for changing rates of electric and telephone cooperatives and municipally operated water utilities.

(a) Electric cooperatives, telephone cooperatives and 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 electric cooperatives, telephone cooperatives and 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 the electric or telephone cooperative's governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, such other reasonable notice as will allow filing of timely objections to such rate change. 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 electric cooperative, telephone cooperative or 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 electric cooperative, telephone cooperative or 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 or resolution 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 twenty-five percent of the membership of the electric or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the
(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, or twenty-five percent of the membership of the electric or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate change contained in the ordinance or resolution 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 a 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 imposed by the electric or telephone cooperative or by the municipally operated public utility pursuant to this section.
(f) 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, electric or telephone cooperative or municipality requests such a hearing.

(g) The commission may, upon petition by a municipality or electric or telephone cooperative, allow an interim or emergency rate to take effect, subject to future modification, if it is determined that such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase of the utility commodity sold. In such cases, the commission may waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) Notwithstanding any other provision, the commission shall have no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state of West Virginia.

§24-2-4c. Rate increases for natural gas public utilities relating to purchase of natural gas from suppliers.

Before granting any rate increase to a natural gas public utility the commission must determine that dependable lower-priced supplies of natural gas are not readily available to the applicant from other sources.

At any hearing involving a rate increase for a natural gas public utility, the burden of proof to demonstrate that dependable lower-priced supplies of natural gas are not readily available from other sources and that contracts between the public utility and its suppliers for purchase of natural gas are negotiated at arm's length and are not detrimental to the customers of the utility's services shall be upon the public utility making application for such change.

Should the applying public utility not satisfactorily meet
this burden, then the commission may not authorize an increase greater than that which reflects the reasonable cost of natural gas which is determined to be readily available.

If a gas utility purchases from an affiliate more than fifty percent of its gas supplied to its customers, any purchase cost adjustment increase shall be based on actual costs and may be subject to the general rate case requirements and review of section four-a of this article.

Before the first day of January, one thousand nine hundred eighty-four, the commission shall promulgate rules and regulations detailing what an applying natural gas utility must show in providing that dependable, lower-priced supplies of natural gas are not readily available to the applicant from other sources. Such rules and regulations shall include a requirement that each such utility let out bids for the purchase of a substantial quantity of natural gas supplied to its customers and that each such public utility present evidence demonstrating that all available sources of gas have been thoroughly investigated and that the utility's purchases were at the lowest available price among reliable sources at the time of the purchase. Such evidence shall include a list of all persons, firms and corporations which were investigated as sources of gas; the price per thousand cubic feet at which each investigated person, firm or corporation offered gas for sale; the availability and cost of transporting such gas and the amount of gas potentially available each month by such person, firm or corporation. Such list shall also include the same information resulting from investigation of all "shut-in" wells.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) 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, however, 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.

(b) Pursuant to the requirements of subsection (a) of this
section the commission may issue a certificate of public
convenience and necessity to any intrastate pipeline,
interstate pipeline or local distribution company for the
transportation in intrastate commerce of natural gas used
by any person for one or more uses, as defined by rule, by
the commission in the case of

(1) Natural gas sold by a producer, pipeline or other
seller to such person; or

(2) Natural gas produced by such person.

§24-2-16. Anticompetitive clauses in natural gas contracts
prohibited.

(a) Unenforceable clauses: Any provision of any
contract for the sale of natural gas, which is or becomes
utility natural gas, including any contract in existence on or
before the date of enactment of this section, is hereby
declared against public policy and unenforceable to the
extent that such clause requires the utility to buy more than
a reasonable amount of gas at a greater than reasonable
price if such provision includes:

(1) A take-or-pay clause which commits the purchaser
to take delivery of a minimum volume of natural gas; or

(2) An indefinite price escalator clause which has been
defined in the Natural Gas Policy Act, section 105(b)(3)(B),
15 U.S.C.A., section 3315(b)(3)(B), as any provision of any
contract:

(i) Which provides for the establishment or adjustment of
the price for natural gas delivered under such contract by
reference to other prices for natural gas, for crude oil, or for
refined petroleum products; or

(ii) Which allows for the establishment or adjustment of
the price of natural gas delivered under such contract by
negotiation between the parties; or

(3) A most favored nation clause which accords to the
transaction, presently or in the future, the highest price
prevailing in the region for similar transactions.
(b) Commission review: Upon application made by the utility, or upon its own motion, the commission may hold hearings after notice as to the reasonableness of the quantity and price of gas purchased pursuant to such contracts.

ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY AND GAS.

§24-2A-1. Special rates for gas and electric utility customers receiving Social Security Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), Aid to Families with Dependent Children—Unemployed (AFDC-U), or food stamps.


§24-2A-1. Special rates for gas and electric utility customers receiving Social Security Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), Aid to Families with Dependent Children—Unemployed (AFDC-U), or food stamps.

1 The commission shall order a special reduced rate schedule for the provision of gas and electric service for the billing months of November, December, January, February and March of each year; to residential utility customers receiving (a) Social Security Supplemental Security Income (SSI), (b) Aid to Families with Dependent Children (AFDC), (c) Aid to Families with Dependent Children—Unemployed (AFDC-U), or (d) food stamps, if such food stamp recipients are sixty years of age or older. The rate to be established for each gas and electric utility shall be twenty percent less than the rate applicable to other residential customers obtaining similar service. Before any individual may qualify for this reduced rate service the following requirements must be met:

(a) The residential reduced rate service shall apply only to current customers or to those persons who subsequently become customers in their own right. If an SSI, AFDC-U or food stamp recipient is living in a household which is served under the name of a non-SSI, AFDC, AFDC-U or food stamp recipient, that service may not be changed or have been changed subsequent to the twelfth day of March, one thousand nine hundred eighty-three, to the name of the SSI, AFDC, AFDC-U or food stamp recipient in order to qualify for the reduced rate service.
(b) The burden of proving eligibility for the residential reduced rate service shall be on the customer requesting the service. To meet that burden, individuals, requesting residential reduced rate service must demonstrate that they are actual customers of the utility and must produce either their SSI, AFDC, AFDC-U or food stamp identification card. No customer who is a recipient of both SSI and either AFDC, AFDC-U or food stamps, shall be eligible for more than one discount for each kind of utility service.

The commission shall establish reasonable standards regarding proof of continuing eligibility for the residential reduced rate schedule set forth in this article. Such standards shall be established by rules and regulations.


In order to provide the residential reduced rate schedule and still maintain the integrity of the various gas or electric utilities' earnings, at the end of the billing period for the month of March, one thousand nine hundred eighty-four, and each year thereafter the commission shall conduct such proceedings as necessary to determine the revenue deficiency resulting from the reduced rates, and the deficiency shall be recovered by each affected utility as follows:

(1) There is hereby created a special fund in the office of the auditor to be known as the “Low Income Residential Utility Assistance Fund.” The Legislature may appropriate into such fund such sums of general or special revenues as it may deem appropriate. The auditor is hereby authorized and empowered to accept for the state, in the name of the fund, gifts, donations, contributions, bequests of money or securities and such sums as may become available as a result of a voluntary check-off and contribution of state tax refunds on state corporate and personal income tax return forms designed by the state tax commissioner. Also, there may be transferred into such fund, upon the requisition of the governor, any unexpended balance in any year remaining after distribution of funds allocated to and received by the state pursuant to the “Low Income Energy Assistance Program” established by and pursuant to the Omnibus Budget Reconciliation Act of 1981, (Title 42, U.S.C. §§8621 et seq.) to the extent and only to the extent
such transfers may be permitted by applicable statute, rule
or regulation of the United States: Provided, That nothing
herein shall be construed to permit, require or authorize
any discontinuance or reduction of assistance to any person
now or hereafter eligible for assistance from the "Low
Income Energy Assistance Program."

(2) At the end of the billing period for the month of
March, one thousand nine hundred eighty-four, and each
year thereafter the commission shall ascertain from the
auditor the total amount available for distribution in that
fiscal year, if any, from the low income residential utility
assistance fund created under this section. Such fund shall
be allocated among the various gas and electric utilities
according to the proportionate share of each such utility's
revenue deficiency resulting from reduced rates mandated
by section one of this article bears to the total aggregate
deficiency of all such utilities. The commission shall
transmit to the auditor its requisition drawn to the order of
each affected utility for the proportion of its revenue
deficiency to be paid from the fund.

Such payments may be made as frequently during any
fiscal year as may be deemed appropriate by the
commission.

(3) After payment by the auditor under this section, the
remaining revenue deficiency, if any, shall be allowed as a
tax credit against the liability of the utility pursuant to the
provisions of section eleven, article twenty-four of chapter
eleven.

ARTICLE 2B. TEMPORARY SUSPENSION OF RATE INCREASES.

§24-2B-1. Temporary suspension of rate increases.
§24-2B-2. Emergency rate increase; financial hardship procedure.

§24-2B-1. Temporary suspension of rate increases.

Pursuant to the findings contained in subsections (h) and
(i), section one, article one of this chapter and in order to
permit the public service commission to implement the
provisions of Enrolled Committee Substitute for S. B. 117
enacted by the Legislature during the regular session
thereof in the year one thousand nine hundred eighty-three,
and notwithstanding any other provision of this chapter,
upon the effective date of this article, the commission shall authorize no increase of rates charged by any utility for natural gas to any customer of any class for a period of twelve months. With respect to cases for rate increases which are pending before the commission on the effective date of this section, such cases may be suspended by the commission and held in abeyance by the commission during the pendency of the period of suspension mandated by this section or any such cases may proceed to completion and the commission may rule thereon upon the same to the same extent as if this section had not been enacted, all within the sound discretion of the commission.

The commission may authorize such gas rate increases during the period of suspension of rate increases mandated by this section as it may deem proper by reason of increased costs of purchased gas. The commission may consider in determining whether to authorize such rate increases the purchase and use of West Virginia gas by such utilities if such gas were available at a cheaper rate than other gas actually purchased by such utilities.

§24-2B-2. Emergency rate increase; financial hardship procedure.

During the period of temporary suspension of rates generally, as provided herein, the commission may upon petition by a utility allow an emergency rate to take effect, subject to future modification by the commission and subject to refund to the customers of such utility, if it is determined that such emergency rate is necessary to protect the utility from extreme financial hardship and if that financial hardship is attributable solely to the temporary suspension of rate increases. The commission shall provide by rule and regulation criteria for determination of extreme financial hardship within the meaning of this section. Such petition shall be subject to the same notice requirements as set forth in article two, section four-a of this chapter.
ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-2. Discrimination prohibited.
No public utility subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation, for any service rendered or to be rendered, than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

It shall be unlawful for any public utility subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Nothing in this section shall be construed to prevent the commission from authorizing or requiring any rate design consistent with the purposes and policies set forth in article two-a of this chapter.

§24-3-3a. Gas utility pipelines declared as common carriers; commission approval of certain transportation.
(a) As used in this section or in section eleven, article two of this chapter:

(1) "Intrastate pipeline" means (i) any utility or (ii) any other person, firm or corporation engaged in natural gas transportation in intrastate commerce to or for another person, firm or corporation for compensation.

(2) "Interstate pipeline" means any person, firm or corporation engaged in natural gas transportation subject...
(3) “Local distribution company” means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(4) “Intrastate commerce” includes the production, gathering, treatment, processing, transportation and delivery of natural gas entirely within this state.

(5) “Transportation” includes exchange, backhaul, displacement or other means of transportation.


(b) The commission may by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands or by local distribution companies for any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(c) For reasons of safety, deliverability or operational efficiency the commission may, in its discretion, by rule or order, exclude from the requirements of this section any part of any pipeline solely dedicated to storage, or gathering, or low pressure distribution of natural gas.

(d) (1) The rates and charges of any interstate pipeline with respect to any transportation authorized and required under subsection (b) of this section shall be just and reasonable and computed by the public service commission in accordance with the guidelines set forth by the FERC and in effect upon the date of application by the commission for the transportation of natural gas by any interstate pipeline on behalf of any intrastate pipeline or any local distribution company.

(2) The rates and charges of any intrastate pipeline with respect to any transportation authorized and required
under subsection (b) of this section shall be fair and reasonable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service. The computation of such rates and charges by the public service commission shall be in accordance with the guidelines set forth by the FERC and in effect upon the date of application by the commission for the transportation of natural gas by any intrastate pipeline in behalf of any interstate pipeline or any local distribution company served by any interstate pipeline.

(e) The provisions of this article and each section, subsection, subdivision, paragraph and subparagraph thereof shall be severable from the provisions of each other subparagraph, paragraph, subdivision, subsection, section, article or chapter of this code so that if any provision of this article be held void, the remaining provisions of this act and this code shall remain valid.

§24-3-7. Permit to abandon service; certificate; alternative service.

1 No railroad or other public utility shall abandon all or any portion of its service to the public or the operation of any of its lines which would affect the service it is rendering the public unless and until there shall first have been filed with the public service commission of this state an application for a permit to abandon service and obtained from the commission an order stating that the present and future public convenience and necessity permits such abandonment.

10 In the event the commission determines that an application to abandon gas service or any part thereof is in the public interest and required by the present and future public convenience and necessity, it shall include in its order, as a condition of releasing any such utility from its public service obligation to provide gas service, a provision requiring the utility, prior to discontinuing service, to pay the cost reasonably necessary to convert each customer to an alternate fuel source.

§24-3-8. Deposits.

1 No public utility shall require any deposit of any
2 residential customer which shall exceed one twelfth of the
3 estimated annual charge to the customer for such service:
4 Provided, That the provisions of this section shall not apply
5 to deposits received prior to the effective date of this act.

CHAPTER 187

(S. B. 525—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to revisions of
the water pollution control act; providing the chief of the
division of water resources with the authority to promulgate
rules and regulations; and imposing restrictions upon the
water resources board concerning the rules and regulations
promulgated by the chief.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

PART II. CHIEF OF DIVISION OF WATER RESOURCES
AND WATER RESOURCES BOARD.

§20-5A-3. General powers and duties of chief and board with
respect to pollution.

1 (a) In addition to all other powers and duties of the chief of
2 the departments division of water resources, as prescribed in
3 this article or elsewhere by law, the chief, under the supervi-
4 sion of the director, shall have and may exercise the following
5 powers and authority and shall perform the following duties:

6 (1) To perform any and all acts necessary to carry out
7 the purposes and requirements of this article and of the
8 "Federal Water Pollution Control Act," as amended,
9 relating to this state's participation in the "National
10 Pollutant Discharge Elimination System" established
11 under that act;
(2) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state. The department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;
(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, regulations, permits and orders issued pursuant to the provisions of this article;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the chief according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the department;

(12) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article or the rules and regulations promulgated hereunder;

(13) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial
(14) To adopt, modify or repeal procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the chief by the provisions of this article.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To cooperate with any interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to the control and reduction of water pollution;

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, (A) implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; (C) establishing standards of quality for the waters of the state under such conditions as the board may prescribe for the prevention, control and abatement of pollution; and (D) to facilitate the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no such rule and regulation adopted by the board shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant: Provided further, That the board may not modify or repeal by rule making procedural rules and interpretive rules promulgated by the chief in accordance with the
provisions of chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the chief by the provisions of this article; and

(3) To make and enter a consent order which shall have the same effect as an order entered after a hearing as provided in section fifteen of this article.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys-at-law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) Whenever required to carry out the objectives of this article: (A) The chief shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the chief shall prescribe, and (v) provide such other information as he may reasonably require; and (B) the chief or his authorized representative upon presentation of credentials (i) shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under (A) of this subsection are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under (A) of this subsection and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under (A) of this subsection.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports
and recommendations thereon to the county commissions of
the areas concerned, together with a request that such
county commissions create a public service district or
districts, as therein shown to be needed and required and as
provided in article thirteen-a, chapter sixteen of this code.
In the event a county commission shall fail to act to
establish a county-wide public service district or districts,
the board shall act jointly with the state director of health,
the director of the department of natural resources and the
chief of the division of water resources to further
investigate and ascertain the financial feasibility and
projected financial capability and, subject to the approval
of the public service commission, order the county
commission to take action to establish such public service
district or districts as may be necessary to control, reduce or
abate the pollution, and when so ordered the county
commission members must act to establish such a county-
wide public service district or districts.

CHAPTER 188
(S. B. 481—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-a,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the pro-
cedure concerning water pollution control permits; trans-
fer of permits; prior permits; extension of permit when
reissuance application pending; discretionary issuance of
permits upon reasonable terms and conditions; permits to
have a fixed term; and denial of permits.

Be it enacted by the Legislature of West Virginia:

That section seven, article five-a, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.

(a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section five of this article, the chief shall consult with the director of the state geological and economic survey and the deputy director of the oil and gas division of the department of mines, and all such persons shall cooperate with the chief and assist him in carrying out the duties and responsibilities imposed upon him under the provisions of this article and the rules and regulations of the board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules and regulations of the board.

(b) The department's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules and regulations of the board: Provided, That the chief may issue a permit whenever in his judg-
ment the water quality standards of the state may be
best protected by the institution of a program of phased
pollution abatement which under the terms of the permit
may temporarily allow a limited degree of pollution of
the waters of the state; and (2) in cases wherein it is
required, such applicant shall include the name and ad-

dress of the responsible agent as set forth in section
eight-b of this article.

(c) Each permit issued under this article shall have a
fixed term not to exceed five years: Provided, That when
the applicant, in accordance with agency rules, has
made a timely and complete application for permit re-
issuance, the permit term may be extended by the chief,
at his discretion, for a period not to exceed eighteen
months beyond its expiration date. Upon expiration of a
permit, a new permit may be issued by the chief upon
condition that the discharges or releases, escapes, deposits
and disposition thereunder meet or will meet all applica-
ble state and federal water quality standards, effluent
limitations and all other requirements of this article.

(d) An application for a permit incident to remedial
action in accordance with the provisions of section eleven
of this article shall be processed and decided as any other
application for a permit required under the provisions of
section five of this article.

(e) A complete application for any permit shall be
acted upon by the chief, and the department's permit de-
ivered or mailed, or a copy of any order of the chief
denyng any such application delivered or mailed to the
applicant by the chief, within a reasonable time period as
prescribed by rules and regulations of the board.

(f) When it is established that an application for a
permnt should be denied, the chief shall make and enter
an order to that effect, which order shall specify the
reasons for such denial, and shall cause a copy of such
order to be served on the applicant by registered or cer-
tified mail. The chief shall also cause a notice to be served
with a copy of such order, which notice shall advise the
applicant of his right to appeal to the board by filing a
notice of appeal on the form prescribed by the board for
such purpose, with the board, in accordance with the
provisions of section fifteen of this article, within thirty
days after the date upon which the applicant received the
copy of such order. However, an applicant may alter the
plans and specifications for the proposed activity and
submit a new application for any such permit, in which
event the procedure hereinbefore outlined with respect
to an original application shall apply.

(g) Upon the sale of property which includes an activ-
ity for which the department's permit was granted, the
permit shall be transferable to the new owner, but the
transfer shall not become effective until the provisions of
section eight-b of this article are fully complied with, and
until such transfer is made in the records of the division
of water resources.

(h) All permits for the discharge of sewage, industrial
wastes or other wastes into any waters of the state issued
by the water resources board prior to July one, one
thousand nine hundred sixty-four, and all permits here-
tofore issued under the provisions of this article, and
which have not been heretofore revoked, are subject to
review, revocation, suspension, modification and reissu-
ance in accordance with the terms and conditions of this
article and the rules and regulations promulgated there-
under. Any order of revocation, suspension or modifica-
tion made and entered pursuant to this subsection shall
be upon at least twenty days' notice and shall specify the
reasons for such revocation, suspension or modification
and the chief shall cause a copy of such order, together
with a copy of a notice of the right to appeal to the board
as provided for in section eight of this article, to be served
upon the permit holder as specified in said section eight.
AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing and redefining the term workmen's, as used in the descriptions of the various offices, boards and funds set out in the law, to mean workers'.

Be it enacted by the Legislature of West Virginia:

That section one, article one, 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 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.

1 There shall be a state workers' compensation commissioner who shall be appointed by the governor by and with the advice and consent of the Senate and who shall serve at the will and pleasure of the governor during the term for which the governor was elected and until the commissioner's successor has been appointed and qualified.

2 An appointment may be made to fill a vacancy or otherwise when the Senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall take the oath or affirmation prescribed by section five, article IV of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. The person so appointed shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of this office, which bond shall be approved by the attorney
The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers' compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers' compensation appeal board, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person's regular salary.

Whenever in this chapter or elsewhere in law reference is made to "state director of workmen's compensation" or "compensation commissioner" such reference shall henceforth
be construed and understood to mean "state workers' compensation commissioner."

Whenever in this chapter or elsewhere in law reference is made to the term "workmen's compensation" or reference is made to the "workmen's compensation advisory board," "workmen's compensation fund," "disabled workmen's relief fund" and "workmen's compensation appeal board," such references to and the titles of each such board or fund shall be henceforth construed to mean, and shall be defined to mean, respectively, "workers' compensation," "workers' compensation advisory board," "workers' compensation fund," "disabled workers' relief fund" and "workers' compensation appeal board."

CHAPTER 190
(S. B. 313—By Mr. McGrew, Mr. President)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation advisory board.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article one, 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 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-18. Workers' compensation advisory board created; membership; appointment; terms; meetings; duties; annual reports.

There is hereby created an advisory board to the commissioner of the workers' compensation fund to be known as "the workers' compensation advisory board."

The workers' compensation advisory board consists of
ten members. The workers' compensation commissioner is
an ex officio member of the board whose term as such
member continues for that period in which the commis-
sioner holds that office. The other nine members of the
board shall be appointed by the governor with three mem-
ers representing employees subject to this chapter, three
members representing employers subject to this chapter
and three members representing providers of medical
services to such employees for which such providers are
compensated under the provisions of this chapter. The
term of each member except the workers' compen-
sation commissioner shall be three years: Provided, That of
the persons originally appointed, three members, includ-
ing one member of each of the three representative
groups, shall be designated to serve for terms of one
year each, three members, including one member of each
of the three representative groups, shall be designated to
serve for terms of two years each and three members,
including one member of each of the three representative
groups, shall be designated to serve for a term of three
years each. The terms of all the initially appointed mem-
ers of the board shall begin on the first day of July,
one thousand nine hundred eighty-three. Upon the exp-
iration of each of such initial appointments the term of
each new appointee shall be three years, but any person
appointed to fill a vacancy occurring prior to the expira-
tion of the term for which his predecessor was appointed
shall be appointed only for the remainder of such term.
Each member shall serve until the appointment and
qualification of his successor. Members shall be eligible for
reappointment.

The workers' compensation commissioner shall serve
as chairman of the board. The other nine members shall
select one of their number to serve as vice chairman of
the board and to preside in the absence of the commis-
sioner. Meetings may be held at any time at the call of
the commissioner. The commissioner shall call a meeting
whenever a majority of the other members of the board
requests the commissioner to do so. At least one meeting
shall be held annually.
The purpose of the board and the duty of its members are to advise the workers' compensation commissioner on matters pertinent to the administration of the workers' compensation fund. The board shall consider any matter brought before it by the commissioner or any appointed member and may consider any matter referred to it by a person not a member of the board. At the conclusion of its consideration of any proposal the board shall make its recommendation to the commissioner. The commissioner is not bound by any recommendation of the board. The board also may formulate general or long-range plans for improvements in the administration of the fund for the consideration of the commissioner.

By the second Wednesday of January of each year the board shall prepare and deliver to the workers' compensation commissioner and to the Legislature a report of all the matters it considered, recommendations it made and plans it formulated during the preceding calendar year. The report shall include any recommendations it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

CHAPTER 191
(Com. Sub. for H. B. 1313—By Mr. Moore)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funeral expenses; commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; and requirements for reimbursement of medical examination costs.

Be it enacted by the Legislature of West Virginia:

That sections four and sixteen, article four, chapter twenty-three
ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-4. Funeral expenses.

§23-4-16. Commissioner’s jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, reasonable funeral expenses, not to exceed two thousand five hundred dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee’s dependents.

§23-4-16. Commissioner’s jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.

1 The power and jurisdiction of the commissioner over each case shall be continuing and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, That no further award may be made in fatal cases arising after March seventh, one thousand nine hundred twenty-nine, except within two years after the death of the employee, or in case of nonfatal injuries, on and after March seventh, one thousand nine hundred twenty-nine, except within five years after payments for temporary disability shall have ceased or not more than two times within five years after the commissioner shall have made the last payment in the original award or any subsequent increase thereto in any permanent disability case: Provided, however, That no such modification or change may be made in any case in which no award has been made, except within five years after the date of injury: Provided further, That a further award may be made for medical benefits only at any time. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and
filed within the applicable time limit as prescribed herein, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commissioner in support of his application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the commissioner to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commissioner by the claimant, but shall in no case exceed the sum of one hundred dollars: Provided, That upon a showing by the claimant or the examining physician of good cause why a medical examination cost in excess of one hundred dollars, the commissioner may reimburse the claimant for the actual cost thereof, but not in excess of two hundred fifty dollars.

CHAPTER 192

(Com. Sub. for H. B. 1201—By Mr. Speaker, Mr. See and Mr. Albright)

[Passed February 7, 1983; in effect ninety days from passage. Approved by the Governor.]}

AN ACT to amend and reenact section two, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-c, all relating to workmen's compensation; providing for the rejection of workmen's compensation claims resulting from a self-inflicted injury or intoxication; eliminating from workmen's compensation claims the defenses of willful misconduct, willful disobedience, willful self-exposure and failure to use protective or safety appliances; authorizing a civil suit in addition to workmen's compensation benefits when the injury or death results from a deliberate intention to produce such injury or death; setting forth certain legislative findings as to the purposes of
the West Virginia workmen's compensation system and the immunity from suit provisions provided as a part of such system; specifying circumstances under which the immunity from suit shall be abrogated; requiring a court hearing in action brought under this chapter to dismiss the action unless there is substantial evidence of the existence of the facts required by this section; disallowing punitive or exemplary damages in suits other than those based upon an injury caused by an employer who acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee; providing that the provisions of this section are severable; establishing an employers' excess liability fund, which is separate from the workmen's compensation fund and participation in which is optional for employers; providing for payment of damages from the fund; the manner of settlement of claims against the fund in certain cases; providing for the funding of the fund; and providing for the administration of the fund and clarifying the rule-making and other powers of the workmen's compensation commissioner with respect to said fund.

Be it enacted by the Legislature of West Virginia:

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

Article

4. Disability and Death Benefits.

4C. Employers' Excess Liability Fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

(a) Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct-compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the pro-
visions of this chapter, on account of any personal injury to
or death to any employee caused by a self-inflicted injury or
the intoxication of such employee. For the purpose of this
chapter, the commissioner may cooperate with the state de-
partment of mines and the state department of labor in pro-
moting general safety programs and in formulating rules and
regulations to govern hazardous employments.

(b) If injury or death result to any employee from the
deliberate intention of his employer to produce such injury
or death, the employee, the widow, widower, child or dependent
of the employee shall have the privilege to take under this
chapter, and shall also have cause of action against the em-
ployer, as if this chapter had not been enacted, for any excess
of damages over the amount received or receivable under this
chapter.

(c) (1) It is declared that enactment of this chapter and the
establishment of the workmen's compensation system in this
chapter was and is intended to remove from the common law
tort system all disputes between or among employers and em-
ployees regarding the compensation to be received for injury
or death to an employee except as herein expressly provided,
and to establish a system which compensates even though the
injury or death of an employee may be caused by his own fault
or the fault of a co-employee; that the immunity established
in sections six and six-a, article two of this chapter, is an
essential aspect of this workmen's compensation system; that
the intent of the Legislature in providing immunity from com-
mon law suit was and is to protect those so immunized from
litigation outside the workmen's compensation system except
as herein expressly provided; that, in enacting the immunity
provisions of this chapter, the Legislature intended to create
a legislative standard for loss of that immunity of more nar-
row application and containing more specific mandatory ele-
ments than the common law tort system concept and standard
of willful, wanton and reckless misconduct; and that it was
and is the legislative intent to promote prompt judicial reso-
lation of the question of whether a suit prosecuted under the
asserted authority of this section is or is not prohibited by the
immunity granted under this chapter.
The immunity from suit provided under this section and under section six-a, article two of this chapter, may be lost only if the employer or person against whom liability is asserted acted with "deliberate intention." This requirement may be satisfied only if:

(i) It is proved that such employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of (A) conduct which produces a result that was not specifically intended; (B) conduct which constitutes negligence, no matter how gross or aggravated; or (C) willful, wanton or reckless misconduct; or

(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of such specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by such specific unsafe working condition;

(C) That such specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of such employer, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C) hereof, such employer never-
theless thereafter exposed an employee to such specific unsafe
working condition intentionally; and

(E) That such employee so exposed suffered serious injury
or death as a direct and proximate result of such specific un-
safe working condition.

(iii) In cases alleging liability under the provisions of the
preceding paragraph (ii):

(A) No punitive or exemplary damages shall be awarded to
the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to
the contrary, and consistent with the legislative findings of
intent to promote prompt judicial resolution of issues of im-
munity from litigation under this chapter, the court shall dis-
miss the action upon motion for summary judgment if it shall
find, pursuant to Rule 56 of the Rules of Civil Procedure that
one or more of the facts required to be proved by the provi-
sions of subparagraphs (A) through (E) of the preceding para-
graph (ii) do not exist, and the court shall dismiss the action
upon a timely motion for a directed verdict against the plain-
tiff if after considering all the evidence and every inference
legitimately and reasonably raised thereby most favorably to
the plaintiff, the court shall determine that there is not suf-
ficient evidence to find each and every one of the facts re-
quired to be proven by the provisions of subparagraph (A)
through (E) of the preceding paragraph (ii); and

(C) The provisions of this paragraph and of each sub-
paragraph thereof shall be severable from the provisions of each
other subparagraph, subsection, section, article or chapter of
this code so that if any provision of a subparagraph of this
paragraph be held void, the remaining provisions of this act
and this code shall remain valid.

(d) The reenactment of this section in the regular session
of the Legislature during the year one thousand nine hundred
eighty-three, shall not in any way affect the right of any per-
son to bring an action with respect to or upon any cause of
action which arose or accrued prior to the effective date of
such reenactment.
ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-1. Purpose.

The purpose of this article is to establish a fund to provide insurance coverage for employers subject to this chapter who may be subjected to liability under section two, article four of this chapter, for any excess of damages over the amount received or receivable under this chapter.

§23-4C-2. Employers’ excess liability fund established.

To provide insurance coverage for employers subject to this chapter who may be subjected to liability for any excess of damages over the amount received or receivable under this chapter, there is hereby established a fund to be known as the employers’ excess liability fund, which fund shall be separate from the workmen’s compensation fund. The employers' excess liability fund shall consist of premiums paid thereto by employers who may voluntarily elect to subscribe to the fund for coverage of potential liability to any person who may be entitled to any excess of damages over the amount received or receivable under this chapter.

§23-4C-3. Payment of excess damages from fund.

Upon receipt of a final order of a court determining the liability under section two, article four of this chapter, of a subscribing employer and the amount of the excess of damages over the amount received or receivable under this chapter, the commissioner shall make disbursements from the employers’ excess liability fund in such amounts and to such persons as such final order may direct. In the event of a proposed settlement of a disputed claim against a subscribing employer, the commissioner, upon approving the settlement upon petition by the subscribing employer, shall make disbursements from the employers’ excess liability fund in such amounts and to such persons as the approved settlement may specify. In the event of the settlement of any disputed claim wherein one
or more of the persons entitled to the proceeds to be paid pursuant to such settlement is under a legal disability by reason of age, mental incapacity or other reason, such settlement, if required by other provisions of law to be approved by a circuit court, shall be approved by the circuit court of the county wherein such person under disability is a resident or wherein a civil action could be brought and maintained upon such claim, in addition to being approved by the commissioner as required by this section. The commissioner shall by legislative rule establish criteria and procedures for the settlement of all disputed claims. In order to expeditiously establish such criteria and procedures, the commissioner is hereby given authority to promulgate such emergency rule or rules as may be necessary in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The provisions of said section fifteen, article three, chapter twenty-nine-a notwithstanding, such emergency rule, whether procedural, interpretive or legislative, shall be effective upon the filing thereof in the state register and shall have an effective period of not to exceed eighteen months, unless any such rule or rules be altered or amended or such period of time shortened or lengthened by subsequent act of the Legislature. No action shall lie for de novo or other review of such rule to contest or question the existence of circumstances justifying the promulgation of an emergency rule nor to challenge the validity of such rule because of its classification as an emergency rule.

§23-4C-4. Employers’ excess liability fund; how funded.

For the purpose of creating the employers’ excess liability fund, each employer who shall elect to subscribe to the fund shall pay premiums based upon and being such a percentage of the payroll of the employer as the commissioner may determine. It shall be the duty of the commissioner to fix and maintain the lowest possible rates or premiums consistent with the maintenance of a solvent fund. The premium rates shall be adjusted annually, or more often as may in the opinion of the commissioner be necessary.

The commissioner shall initially classify subscribers into groups or classes according to the nature of the unusual hazards incident to the business thereof as contemplated by section four,
article two of this chapter, and assign premium rates thereto. The fixing, maintaining and adjusting of premium rates and the initial classification of subscribers into groups or classes pursuant to this section shall be deemed to be findings or determinations of fact and not a legislative rule. In addition, the commissioner shall by legislative rule prescribe procedures for subscription, payroll reporting, premium payment, termination of subscription, reinstatement, reclassification of groups, classes or subscribers, the increase or decrease of premiums based upon incidence of liability and amounts awarded, and other matters pertinent to the subscribers' continuing participation in the employers' excess liability fund.

§23-4C-5. Administration.

The employers' excess liability fund shall be administered by the state workmen's compensation commissioner, who shall employ such employees as may be necessary to discharge his duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the employers' excess liability fund upon requisitions signed by the commissioner.

CHAPTER 193
(H. B. 1654—By Mr. Love and Mr. Cipriani)

[Passed March 1, 1983; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, as last amended by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-three, relating to the creation and maintenance of a children's shelter and certain funds in Hancock County; and to provide for the transfer of any unexpended balance remaining in the funds established by said chapter to the Hancock County sheltered workshop.
Be it enacted by the Legislature of West Virginia:

HANCOCK COUNTY CHILDREN'S SHELTER.

§1. Repeal of act creating Hancock county children's shelter and funds; transfer of funds.

Chapter one hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, as last amended by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-three, is hereby repealed and any unexpended balance remaining in any of the funds or accounts established under the provisions of said chapter are hereby transferred to the Hancock County sheltered workshop.

CHAPTER 194
(S. B. 569—By Mr. Nelson and Mr. Heck)
[Passed March 5, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three; by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; and by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, all relating to the Greater Huntington park and recreation district; definitions; park district generally, composition, terms, conflicts; compensation; expenses; vacancies; oaths; elections; duties; bonds; meetings; commission a public corporate body; perpetual existence; seal; powers; comprehensive plan; financing; providing for additional levies on certain governing authorities; law enforcement; title to property.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as
amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; and by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§1. Definitions.
§2. Greater Huntington park and recreation district; composition; terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contracts or property controlled by board.
§3. Vacancies in office of park commissioners.
§4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.
§5. Meetings; quorum; parliamentary authority; office.
§6. Park district a public corporate body; perpetual existence; seal; powers.
§6a. Comprehensive plan.
§7. Financing and financial powers.
§8. Law enforcement.
§9. Title to property.

§1. Definitions.
1 Unless the context clearly indicates otherwise:
2 "Commissioners" means the members of the Greater Huntington park and recreation district as defined hereinafter.
3 "Control" means the right and authority to manage, direct, order and otherwise exercise dominion over.
4 "Greater Huntington park and recreation district" means both the geographical area within the boundaries of the county of Cabell and Westmoreland tax district in the county of Wayne established on the effective date of this act and the public corporate entity created herein.
5 "Park system" means any and all indoor and outdoor park, recreation, and conservation areas and facilities which are or in the future may be owned, operated or leased in the park district. Said areas and facilities may include, by way of illustration and not as a limitation: Regional, community, and neighborhood parks and playgrounds; athletic facilities and play fields such as sports centers, stadiums, arenas, gymnasiums and physical fitness centers; aquatic facilities
such as swimming pools, lakes, ponds, water parks, water
amusements, beaches, waterfronts, boat docks, boat houses,
and boat launching ramps; court areas for net games such as
basketball, volleyball, badminton, tennis, handball,
racquetball, squash and platform tennis; picnic facilities such
as groves, shelters and lodges; golf courses, skating rinks;
stables and riding paths; gardens, botanic gardens,
arboretums, nature centers, zoos, aviaries and environmental
interpretive centers; museums, historic landmarks and
historic districts; snack bars, restaurants, lounges and gift
shops; camps and overnight lodges; theaters; performing arts
and crafts centers; recreation centers; mechanical and
electronic games centers; dance halls; amusements;
parkways and boulevards; and cemeteries, and other public
parks and recreational areas and facilities.

"Public office" means any elective office, whether federal,
state or municipal, where the office holder is elected by the
public at large and is obligated to perform duties as an office
holder.

§2. Greater Huntington park and recreation district; com­
position; terms of office; political affiliation; no commis­
ioner may hold another elected public office; com­
ensation; expenses; no commissioner may be per­
sonally interested in contracts or property contolled by
board.

(a) The purpose of the board of park commissioners of the
city of Huntington as heretofore created and established by
the acts hereby amended and reenacted, shall be to establish,
own, develop and operate a park system for the benefit,
health, safety, welfare, pleasure and relaxation of the
inhabitants of the Greater Huntington park and recreation
district and shall hereafter be known as the Greater
Huntington park and recreation district.

(b) The park district shall be governed by ten
commissioners; nine of whom shall be elected from Cabell
County but no more than two of whom shall be elected from
any one magisterial district, and one of whom shall be elected
from Westmoreland magisterial district in the county of
Wayne. The commissioners shall be elected pursuant to
paragraph one of subsection (b) of this section.
16 (1) Commissioners of the park district shall be nominated and elected in the general election for state officers on the first Tuesday after the first Monday in November and in the manner prescribed by law for the nomination and election of district officers, except as provided in subsection (b).

21 At the general election in the year one thousand nine hundred eighty-four, there shall be elected six commissioners. One commissioner shall be elected from the Westmoreland magisterial district in the county of Wayne. Five commissioners shall be elected from the county of Cabell. In Westmoreland district of Cabell County the person receiving the highest number of votes shall be elected for a term of six years. In Cabell County, the three persons receiving the highest number of votes shall be elected for a term of six years, the person receiving the next highest number of votes shall be elected for a term of four years, and the remaining elected commissioner shall be elected for a term of two years.

34 Beginning at the general election in the year one thousand nine hundred eighty-six and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

38 Beginning at the general election in the year one thousand nine hundred eighty-eight and every sixth year thereafter, there shall be elected three commissioners who shall be elected for a term of six years.

42 Beginning at the general election in the year one thousand nine hundred ninety, and every sixth year thereafter, there shall be elected four commissioners who shall be elected for a term of six years.

46 (2) The commissioners in office upon the effective date of this act under the authority of the acts hereby amended and reenacted, shall continue in office for the term for which they were elected.

50 (c) No elected commissioner shall hold any other elected or appointed public office.

52 (d) Commissioners shall receive no compensation for their services as commissioners, but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as commissioners.
(e) Commissioners shall have no personal financial interest, directly or indirectly, in any contract entered into by the park district, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as commissioners.

§3. Vacancies in office of park commissioners.

Any vacancy which may occur in the office of an elected commissioner, by death, resignation, refusal to serve, or otherwise, shall be filled by the park district at its first regular meeting thereafter, by appointment of a suitable person, and the person so appointed shall hold office until the next election for commissioners, when a person shall be elected for the remainder of the unexpired term of commissioner.

§4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.

(a) After appointment or election, and before entering upon his duties as commissioner, each new commissioner shall take the following oath as administered by the clerk of the city of Huntington:

"I ......................... do solemnly swear that I will faithfully perform the duties as a member of the Greater Huntington park and recreation district during the term for which I was elected, to the best of my ability according to law."

(b) At the park district's first meeting and every year thereafter, it shall elect one of its members as president, and another member as vice-president. The park district shall elect a secretary who need not be a member of the park district, as well as elect a member of the park district who shall serve as treasurer. The park district shall have the power to appoint from among its members such other officers as it deems necessary and to delegate such duties and authority to these other officers as is consistent with carrying out the purposes of this charter. Any officer may be removed from office, upon adequate notice and hearing, although not relieved of his duties as a commissioner, by a vote of the majority of commissioners present and voting.
(c) The officers of the park district shall have the following specified duties and any duty which is reasonably inferred therefrom and which is consistent with carrying out the purposes of this charter.

(1) President—The president shall perform such duties as ordinarily devolve upon the presiding officer of a deliberative body, except that he shall have a vote upon each and every question, as every other commissioner, but he shall have only one vote on each question. Additionally, the president shall:

(a) Act as chief administrative officer and legal representative of the park district; (b) represent and speak for the park district to other organizations and to the public; (c) appoint committees and delegate duties; (d) sign letters or documents necessary to carry out the will of the park district.

(2) Vice-President—The vice-president shall assume the duties of the president in case of the absence or incapacity of the president and shall become president on the death, resignation or permanent incapacity of the president as determined by the park district.

(3) Secretary—The secretary shall be the chief recording and corresponding officer and the custodian of the records of the park district. The duties of the secretary shall be to:

(a) Take careful and authentic notes of the proceedings of the meetings as a basis for preparing the minutes; (b) prepare and certify the correctness of the minutes and enter them in the official minute book; (c) read or circulate the minutes to the commissioners for correction and approval; (d) enter any corrections approved by the commissioners in the minute book and initial them; (e) record and attest by his signature the approved minutes as the official minutes of the park district, with the date of approval; (f) provide the presiding officer of the assembly with the exact wording of a pending motion or of one previously acted on; (g) prepare a list of members and call the roll when directed by the presiding officer; (h) read all papers, documents, or communications as directed by the presiding officer; (i) bring to each meeting the minute book, a copy of ordinances, rules, and policies, a list of the members, a list of standing and special committees, and a copy of the parliamentary authority adopted by the organization; (j) search the minutes for information requested by officers or members; (k) assist the presiding officer before each meeting in preparing a detailed agenda; (l) preserve all
records, reports, and official documents of the park district
except those specifically assigned to the custody of others as
well as preserve all papers containing evidence of title,
contracts and obligations; (m) prepare and send required
notices of meetings and proposals; (n) provide the chairman
of each special committee with a list of his committee
members, a copy of the motion referring the subject to the
committee, and instructions and other documents that may
be useful; (o) provide the chairman of each standing
committee with a copy of all proposals referred to it,
instructions, or material that may be useful; (p) authenticate
official documents by his signature; (q) carry on the official
correspondence of the park district as directed, except
correspondence assigned to other officers; (r) make available
the minute book for public inspection as a public record; (s)
codify and preserve all ordinances enacted by the park
district.

For this service the secretary, who is not a commissioner,
may receive such compensation as the park district may
allow. Before entering upon the duties of his office, the
secretary shall enter into a bond with one or more sureties
deemed sufficient by the park district and approved by the
park district, conditioned upon the faithful performance of
his duties, the bond to be payable to the Greater Huntington
park and recreation district in such penal sum as the park
district determines, which bond shall be filed with the park
district for safekeeping. In the secretary’s absence, the park
district may appoint a secretary pro tempore.

(4) Treasurer—The treasurer shall be responsible for the
collection, safekeeping, investing and expenditure of all
funds and assets of the park district, and for keeping an
accurate financial record thereof which record shall be
available for public inspection. Before entering upon the
duties of his office, the treasurer shall enter into a bond with
one or more sureties deemed sufficient by the park district,
and approved by the park district, conditioned upon the
faithful discharge of his duties and the accounting for and
paying over, as may be required, all moneys which may come
into his possession by virtue of his office. Such bond shall be
in such penal sum as the park district may require, payable to
the Greater Huntington park and recreation district and filed
with the park district for safekeeping.
§5. Meetings; quorum; parliamentary authority; office.
(a) The commissioners shall select a regular time and place for meetings of the park district which meetings shall be open to the public. Minutes of commission meetings shall be open to any bona fide resident of the park district upon request. Not less than six members shall constitute a quorum to transact business. Special meetings, also open to the public, may be called by the president, or at the request of four members, by the secretary. The concurrence of six members of the park district shall be required to decide all questions involving the expenditure of money.
(b) All meetings of the park district shall be conducted under the rules of parliamentary procedure as established by the Sturgis Standard Code of Parliamentary Procedure.
(c) The park district shall have and maintain an office in a location of its own choosing which office shall be open to the public during normal business hours.

§6. Park district a public corporate body; perpetual existence; seal; powers.
The Greater Huntington park and recreation district shall be a public corporate body, although not a municipal corporation, and shall have perpetual existence and a common seal. The park district shall have powers to:
(1) Appropriate and expend funds from the sources of income derived from the enactment of this charter for the purposes of establishing, constructing, improving, extending, developing, maintaining and operating, or any combination of the foregoing, a public park system for the park district; however, it may not expend funds on or appropriate funds to external agencies, public or private, for any purpose whatsoever. In accordance with section six, item four, the park district may contract with other agencies for direct services received or for joint endeavors in which the park district is an active participant;
(2) Purchase, hold, own, sell, convey or lease or take lease of real or personal property;
(3) Receive any gift, grant, donation, bequest, devise or trust funds;
(4) Sue and be sued;
(5) Contract and be contracted with;

(6) Do any and all things and acts which may be necessary, appropriate, convenient or incidental to carry out and effectuate the purposes and provisions of this charter;

(7) Retain complete and exclusive control and management of all of the properties owned by the park district and dispose of the same as in the park district's opinion will best serve the purposes of this charter and the interests of the public;

(8) Acquire in the park district's name by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such lands, structures or bodies of water, located anywhere within the state of West Virginia park district as the park district shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a park system;

(9) Establish, construct, improve, extend, develop, maintain and operate a park system;

(10) Employ such persons as, in its opinion, may be necessary for the establishment, construction, improvement, extension, development, maintenance, operation or management of the property under its control, at such wages, salaries or fees as it shall deem proper, and the park district shall have full control of all employees;

(11) Promulgate those ordinances, rules and regulations necessary to maintain the property belonging to the park district as places of beauty, education and recreation or necessary to promote the health, property, lives, decency, morality and good order of the independent park district, its inhabitants and members of the general public making use of such property owned or controlled by the park district, or necessary to regulate the use of or driving upon the property owned or controlled by the park district;

(12) Abate, or cause to be abated, all nuisances affecting the park district's property or persons thereupon;

(13) Regulate or prohibit the placing of signs, billboards, posters and advertisements upon the park district's property, or adjacent thereto;
(14) Keep the park district's property in good order and free from obstruction for the use and benefit of the public;

(15) Construct, improve, maintain, repair, operate, curb or recurb, pave or repave, grade or regrade, surface or resurface roads, bridges, sewers, culverts, sidewalks, public ways, easements and other public works upon lands controlled or owned by the park district;

(16) Enter into contracts, agreements, leases and other legal obligations extending beyond a period of one fiscal year: Provided, That the contract, agreement, lease or other legal obligation does not require the expenditure of tax revenues;

(17) Enter into intergovernmental agreements as any municipal corporation would be so entitled to enter into according to law and under such conditions as are required by law of municipal corporations before they enter intergovernmental agreements: Provided, That every such intergovernmental agreement shall, prior to and as a condition precedent to its becoming effective, be submitted to the attorney general of the state of West Virginia who shall determine whether the agreement is in proper form and is compatible with the laws of this state;

(18) Provide by contract with the city of Huntington, town of Milton, village of Barboursville, and the counties of Cabell and Wayne for the joint construction of sewers and other public works upon property owned or controlled by the board, to be paid for by joint funds; and

(19) Spend moneys of the park district to effectuate the purposes set forth in this charter.

§6a. Comprehensive plan.

No later than the first day of January, one thousand nine hundred eighty-six, the park district shall prepare and make public a comprehensive plan as to the future development of the park district. During the year one thousand nine hundred eighty-four, the commission shall conduct at least one public hearing in each magisterial district for the purpose of obtaining citizen input for the comprehensive plan.

§7. Financing and financial powers.

The park district shall have the following powers to:
(1) Make charges to the public for services offered or goods sold by the park district.

(a) Charges for services may be in the forms of, but not limited to: Admission and entrance fees; exclusive use and rental fees; user fees; license and permit fees; equipment rental; program maintenance fees; instructor fees; special accommodation fees; amusement fees; restricted membership fees; and cemetery service fees.

(b) Charges for goods sold may be in the forms of, but not limited to: Beverages and foods; novelties and gifts; clothing; athletic equipment and supplies; cemetery plots, crypts, monuments, memorials, markers, vaults and any other forms of merchandise sold in connection with the burial of the dead; and other items that may pertain to the operation and maintenance of the park district.

(2) Annually levy on each one hundred dollars of the assessed valuation of the property taxable in said park district, within the corporate boundaries of the city of Huntington according to the last assessment thereof for state and county purposes, as follows:

On Class I property, one and one-half cents; on Class II property, three cents; on Class IV property, six cents. The park district may levy a lesser amount, in which case the above levies shall be reduced proportionately. These levies shall be made at the time and in the manner provided by article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; except that the levies shall be included in the maximum rates for the city of Huntington as established by law.

After the park district has made the levy, it shall certify to the finance director of the city of Huntington the amount of the said levy, and the finance director shall thereupon extend the levy upon the tax tickets, and all levies made by the park district shall be collected by the finance director who shall occupy a fiduciary relationship with the park district, and then such levy funds shall be paid to the park district upon written order of the park district signed by the president of the park district and countersigned by the secretary of the park district.

Levies for support, maintenance and operation.
(3) In order to ensure adequate support for the maintenance and operation of the park district the following governing authorities shall, upon written request by the park district levy annually as follows within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the property taxable in the area served by it according to the last assessment for state and county purposes, amounts not exceeding the following amounts for fiscal year beginning July first, one thousand nine hundred eighty-three:

(a) The county commission of Cabell County, for the first year of the act and annually thereafter: Class one, .433 cents; class two, .866 cents; class three and class four, 1.73 cents.

(b) The county commission of Wayne County, for the first year of the act and annually thereafter: Class one, .0066 cents; class two, .0132 cents; class three and class four, .0266 cents.

(c) The board of education of the county of Cabell shall provide funds available to the board through special and excess levies for the first year of the act and annually thereafter: Class one, .433 cents; class two, .866 cents; class three and class four, 1.73 cents.

(d) The city of Huntington, for the first year of the act and annually thereafter: Class one, one and three-tenths cents; class two, two and six-tenths cents; class three and four, five and two-tenths cents.

(e) The town of Milton, for the first year of the act and annually thereafter: Class one, one and three-tenths cents; class two, two and six-tenths cents; class three and class four, five and two-tenths cents.

(f) The town of Barboursville, for the first year of the act and annually thereafter: Class one, one and three-tenths cents; class two, two and six-tenths cents; class three and class four, five and two-tenths cents.

In addition to the aforesaid amounts which, upon written request by said board, the governing authorities shall levy, each such governing authority may support the park district with any other general or special revenues or excess levies. All income realized by the operation of the park district from any sources other than the above levies shall be used by the board of directors for support of the park district.
All money collected or appropriated by the foregoing governing authorities for park district purposes shall be deposited in a special account of the park district and shall be disbursed by that board for the purpose of operating such park district.

(4) Assess the cost of improvements to or construction of streets, sidewalks, sewers, curbs, alleys, public ways or easements, or portions thereof, upon the abutting property owners whose property lies within the park district. Such assessments shall require approval of a majority of the commissioners present and voting, and shall be commenced and conducted in such manner as is prescribed by article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(5) The municipalities of Huntington, Milton, and Barboursville and the counties of Cabell and Wayne are hereby empowered, and authorized to issue, in the manner prescribed by law, revenue bonds or general obligation bonds, for the purpose of raising funds to establish, construct, improve, extend, develop, maintain or operate, a system of public parks and recreational facilities for the city or counties, or to refund any bonds of the city or counties, the proceeds of which were expended in the establishing, constructing, improving, extending, developing, maintaining or operating of such public park and recreation system or any part thereof. Any bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the words "public park and recreation bonds," in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city or counties. The governing body may provide for the issuance of bonds for other lawful purposes of the city or counties in the same ordinance in which provision shall be made for the issuance of bonds under the provisions of this section. The park district shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park and recreation bonds only. The costs and expenses of holding an election to authorize the issuance of public park and recreation bonds and bonds for other city or county purposes shall be paid by the park district and the city or counties respectively, in the proportion that the public
124 park and recreation bonds bear to the total amount of bonds
125 authorized.

126 Whenever the governing body of the city or counties and
127 the requisite majority of the legal votes cast at the election
128 thereon shall authorize in the manner prescribed by law, the
129 issuance of bonds for the purpose of establishing,
130 constructing, improving, extending, developing, maintaining
131 or operating, or any combination of the foregoing, a system of
132 public parks and recreational facilities for the city or
133 counties, or for refunding any outstanding bonds, the
134 proceeds of which were applied to any of said purposes, said
135 bonds shall be issued and delivered to the park district to be
136 by it sold in the manner prescribed by law, and the proceeds
137 thereof shall be paid into the treasury of the park district, and
138 the same shall be applied and utilized by the park district for
139 the purposes prescribed by the ordinance authorizing the
140 issuance of such bonds. In any ordinance for the issuance of
141 bonds for such purposes, it shall be a sufficient statement of
142 the purposes for creating the debt to specify that the same is
143 for purposes of establishing, constructing, improving,
144 extending, developing, maintaining or operating, or any
145 combination of the foregoing, a public park and recreation
146 system for the city or counties, without specifying the
147 particular establishment, construction, improvement,
148 extension, development, maintenance or operation
149 contemplated; but an ordinance for refunding bonds shall
150 designate the issue and the number of bonds which it is
151 proposed to refund.

152 (6) Sue and be sued; make contracts and guarantees; incur
153 liabilities; borrow or lend money for any time period deemed
154 advisable by the commission, sell, mortgage, lease, exchange,
155 transfer or otherwise dispose of its property; or pledge its
156 property as collateral or security for any time period deemed
157 advisable by the commission.

158 (7) Create trusts of such kind as will expedite the efficient
159 management of the property and other assets owned or
160 controlled by the park district. The trustee, whether
161 individual or corporate, in any such trust shall have a
162 fiduciary relationship with the park district and may be
163 removed by the park district for good cause shown or for a
164 breach of the fiduciary relationship with the park district.
§8. Law enforcement.
1 (a) The park district is authorized and empowered to
2 employ as many park rangers as the park district shall deem
3 proper and necessary. Park rangers shall have the power to
4 make arrests for violations of ordinances promulgated by the
5 park district upon the property under the jurisdiction of the
6 park district. Park rangers may not carry a gun without
7 obtaining a license therefor as required by law.
8 (b) Police officers employed by the city of Huntington,
9 town of Milton, village of Barboursville, members of the West
10 Virginia department of public safety and sheriff's deputies in
11 Cabell and Wayne counties are hereby authorized and
12 empowered to make arrests for violations of ordinances
13 promulgated by the park district upon property within the
14 park district which is under the jurisdiction of the park
15 district; and all of the foregoing officers of the law, except
16 members of the Huntington police department, are hereby
17 authorized and empowered to make arrests for violations of
18 ordinances promulgated by the park district upon property
19 under the jurisdiction of the park district which is outside of
20 the park district.
21 (c) For violations of park district ordinances, jurisdiction
22 of all warrants relating thereto to be issued is hereby granted
23 to such courts as have criminal jurisdiction of misdemeanors
24 committed upon property which is owned or controlled by
25 the park district.

§9. Title to property.
1 The title of all parks, parkways, playgrounds, athletic fields,
2 cemeteries, boulevards and other property, real, personal and
3 mixed, vested in the board of park commissioners under the
4 powers and authority of the acts hereby amended and
5 reenacted shall be and remain vested in the Greater
6 Huntington park and recreation district as herein
7 reconstituted.
8 Notwithstanding any provisions of this charter to the
9 contrary, the park district is hereby authorized and
10 empowered to grant and convey to any municipality, town,
11 village, county or to the state of West Virginia, all right, title,
12 control and interest, jurisdiction and maintenance of any
13 streets or boulevards owned by the park district, whenever
14 the park district deems such action to be necessary or
15 convenient and proper and in the best interests of the
16 inhabitants of the park district.

CHAPTER 195
(S. B. 557—By Mrs. Lucht and Mr. Whitacre)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Morgan County
to borrow funds for the renovation of the Morgan County jail.

Be it enacted by the Legislature of West Virginia:

MORGAN COUNTY JAIL.

§1. Morgan County commission authorized to borrow funds for jail renovation.

§2. Limitation; repayment; term.

§1. Morgan County commission authorized to borrow funds for jail renovation.

1 The county commission of Morgan County is hereby
2 authorized to borrow funds from a commercial bank lo-
3 cated within the state of West Virginia, which funds shall
4 be used for the reconstruction, renovation and improve-
5 ment of the existing Morgan County jail, and to execute
6 on behalf of the county any evidence of indebtedness
7 necessary to this purpose.

§2. Limitation; repayment; term.

1 The amount of the indebtedness incurred under the
2 authority of this act shall not exceed one hundred thou-
3 sand dollars. Repayment of such obligation shall be made
4 from funds available to the sheriff by the provisions of
5 section fifteen, article five, chapter seven of the code of
6 West Virginia for jail renovation, and the sheriff is
7 authorized to make such expenditures from the county
8 general fund; from any special fund and from any other
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9 moneys available to the county commission for such
10 purpose.
11
12 Any obligation incurred under the provisions of this
12 act shall not exceed ten years' duration.

CHAPTER 196
(H. B. 1995—By Mr. Albright and Mr. Farley)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to authorize the board of regents to sell at auction a building and lots located on Hickory Street in Parkersburg for a price not less than the average appraised value and to deposit the proceeds of sale to the Parkersburg Community College Capital Building and Land Improvements account.

Be it enacted by the Legislature of West Virginia:

SALE OF LAND IN PARKERSBURG BY BOARD OF REGENTS.

§1. Board of regents authorized to sell building and land located in Parkersburg.

1 The board of regents is here" authorized and empowered to
2 sell a building and lots, designated as Lots 15 and 16 of
3 Edgewater Addition No. 11 in the city of Parkersburg, bound-
4 ed and described as beginning at the northwesterly corner of
5 Hickory Street and Jefferson Avenue; thence with the north-
6 westerly line of Hickory Street in a northeasterly direction
7 113.74 feet to a point in the line of Lot No. 14; with the
8 southwesterly direction 137.94 feet to a point; thence at
9 right angles and in a southwesterly direction 100 feet to
10 Jefferson Avenue; thence with the line of Jefferson Avenue
11 in a southeasterly direction 83.76 feet to the place of begin-
12 ning, and being a part of Edgewater Addition No. 11, located
13 in the city of Parkersburg, Wood County, West Virginia, at
14 a public auction: Provided, That prior to such action the
15 board of regents shall have the property appraised by two
Wayne County

§1. County commission authorized to convey waterline.

1 The Legislature hereby recognizes that an adequate water supply is necessary for the citizens of Wayne County, and that the county commission has constructed certain water distribution lines in order that the local water utility can supply water to the residents of the area. Accordingly, the Legislature hereby finds and declares that the transfer of such waterlines to a water utility for the purpose of water service promotes the health and welfare of the public and, therefore, is a public purpose.

11 The county commission of Wayne County is hereby authorized and empowered to transfer and convey to the Huntington Water Corporation the following waterlines:

14 Beginning at the present terminus of the Huntington
Water Corporation's eight inch water main approximately five feet off the edge of pavement on the southeast side of Spring Valley Road, S. R. 7, in the vicinity of the Northern Wayne County Vocational School, the said eight inch waterline has been extended following S. R. 7 (Spring Valley Road) to S. R. 6 (Sherwood Drive), a distance of approximately 10,350 feet. At the intersection of S. R. 5 (Goodwill Road) with S. R. 7 (Spring Valley Road), approximately 3,450 feet from the beginning of the project, an eight inch waterline extends across S. R. 7 to the northeast corner of the intersection of S. R. 5 (Goodwill Road) and S. R. 5/1 (Hubbards Branch Road) and then extends in the northerly direction approximately 1,000 feet along the east side of S. R. 5/1 (Hubbards Branch Road). At the terminus of the project on S. R. 7 (Spring Valley Road), an eight inch line extends approximately 6,550 feet in the easterly direction generally on the north side of S. R. 6 (Sherwood Drive). At approximately 2,280 feet from the beginning of S. R. 6 (Sherwood Drive) another line, consisting of approximately 1,050 feet of six inch and 1,000 feet of two inch waterline, extends in the southerly direction along the road designated as the South Branch Sherwood Drive. The total project consists of 17,900 feet of eight inch, 1,050 feet six inch, and 1,000 feet two inch waterline, six fire hydrants, and eleven valves.
RESOLUTIONS
(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION NO. 9
(By Mr. Shiflet)
[Adopted March 4, 1983.]

Providing for the adoption and implementation of the West Virginia clean community system program for a more beautiful West Virginia.

WHEREAS, Improper waste handling practices continue to be a serious problem in the state of West Virginia; and

WHEREAS, The directors of the office of economic and community development and the department of natural resources endorse the concept of voluntary control of solid waste in keeping West Virginia "proud and clean"; and

WHEREAS, Improved waste handling practices could be accomplished with the implementation of a West Virginia clean community system program; therefore, be it

Resolved by the Legislature of West Virginia:

That the clean community system council be established and consist of the director of the office of economic and community development, the director of natural resources, a representative of the environmental protection division of the attorney general's office, the commissioner of the department of highways, state superintendent of schools, state superintendent of department of public safety, beverage industry recycling program association, West Virginia county officials association, West Virginia municipal league, West Virginia resource recovery solid waste disposal authority, one member from each house of the Legislature of West Virginia, appropriate conservation and civic organizations and the broadest possible cross section of the state's residents chosen from diverse geographic and socio-cultural groups on a nonpartisan basis; and that said council be created and established to provide overall policy direction, promotion and coordination of the West Virginia clean community system; and, be it
RESOLUTIONS

Further Resolved, That a state coordinator for the West Virginia clean community system council be appointed and, with appropriate budget, work within the office of economic and community development and along with members of the council, plan and execute a West Virginia clean community system designed to involve all cities, counties and state agencies; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby authorized and directed to transmit appropriate copies of this resolution to the governor of the state of West Virginia and the heads of departments named herein.

HOUSE CONCURRENT RESOLUTION NO. 12
(By Mrs. Neal, Mrs. Burke, Mr. Steptoe, Mr. Murphy Mr. Sluss, Mr. Jordan and Mr. Doyle)

[Adopted February 22, 1983.]

Directing the West Virginia Department of Agriculture to initiate whatever cooperation is needed with the other Southern member states of The Council of State Governments and the United States Department of Agriculture to ensure the monitoring and eradication of gypsy moths from within the Southern states.

WHEREAS, The gypsy moth has been a major pest in the Northeastern United States since the early 1900's and is now spreading southward at an alarming rate, having already reached the eastern parts of West Virginia; and

WHEREAS, The gypsy moth can cause up to one hundred percent mortality in susceptible nursery stock and many other agricultural commodities in addition to having a direct negative impact on tourism through the presence of larvae in campgrounds; and

WHEREAS, Many entomologists believe that the gypsy moth may become an even more serious pest in the Southeastern states than anywhere else due to the warmer climate prevailing in the region; and

WHEREAS, It would be of mutual benefit to West Virginia, all of the Southern states and the United States Department of Agriculture to work cooperatively in helping slow the southward spread of this most serious insect pest; therefore, be it
Resolved by the Legislature of West Virginia:

That the West Virginia Department of Agriculture initiate cooperation with other Southern member states of The Council of State Governments and the United States Department of Agriculture to actively monitor the spread of the gypsy moth with the primary purpose being locating and eradicating isolated infestations and working together to reduce the incidences of artificial spread; and, be it

Further Resolved, That the Department of Agriculture, other Southern member states of The Council of State Governments and the United States Department of Agriculture should cooperatively share information and initiate any specific studies needed to alleviate the Southeastern gypsy moth problem; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the Secretary of the United States Department of Agriculture, the West Virginia Commissioner of Agriculture and the Governors, Legislatures and Commissioners of Agriculture of the other Southern member states of The Council of State Governments.

HOUSE CONCURRENT RESOLUTION NO. 18
(By Mr. Teets)

[Adopted March 7, 1983.]  

Urging the West Virginia Department of Health to study the importation of municipal and industrial sludge into the State of West Virginia and to adopt rules and regulations concerning the allowable content of such sludge that can be imported into the State, and further urging the Department of Natural Resources to prohibit the use of sludge in any reclamation project until such rules and regulations are adopted.

WHEREAS, There currently exists an effort to import municipal and industrial sludge from outside of West Virginia into the State for disposal and there are currently no specific statutes or rules and regulations governing this activity; and

WHEREAS, There is no uniformity in the composition of municipal and industrial sludge and this lack of uniformity of composition makes it difficult to monitor the content of this sludge; and
WHEREAS, Municipal and industrial sludge may contain various contaminants and heavy metal elements which can be detrimental to human health and welfare; and

WHEREAS, There currently exists no consensus within the scientific disciplines as to the long range effects of applying municipal and industrial sludge to the soil and other jurisdictions have experienced enormous deleterious results from the disposal of various other waste products about which very little was known; and

WHEREAS, It is in the best interests of the citizens of West Virginia that the importation, transfer, storage and disposal of municipal and industrial sludge be very closely monitored and regulated; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Health is hereby urged to investigate the overall effect of municipal or industrial sludge upon the environment and to promulgate within their current statutory authority rules and regulations governing the allowable content of municipal or industrial sludge that may be imported into the State of West Virginia for any purposes and the monitoring of the same, and that the Department of Natural Resources is hereby urged to prohibit the use of municipal or industrial sludge in any reclamation project until the Department of Health has adopted such rules and regulations; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward copies of this resolution to the directors of the Department of Natural Resources and the Department of Health.

HOUSE CONCURRENT RESOLUTION NO. 20
(By Mr. Bird)

[Adopted February 25, 1983.]

Urging the United States Congress and the President to fund and reactivate the Synthetic Fuels Programs.

WHEREAS, West Virginia's economy was damaged by the cutback of the Synthetic Fuels Programs in Morgantown, West Virginia; and

WHEREAS, A reactivation of the programs would provide a boost
to West Virginia's sagging economy and provide employment for many of our citizens; and

WHEREAS, Such a reactivation would cut down on the United States' dependency on foreign oil and would assist in ensuring a high level of national defense; therefore, be it

Resolved by the Legislature of West Virginia:

That the United States Congress and the President are hereby urged to fund and reactivate the Synthetic Fuels Programs; 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, to Senators Byrd and Randolph and to members of West Virginia's Congressional Delegation.

SENATE CONCURRENT RESOLUTION NO. 6
(By Mr. Palumbo, Mr. Wright and Mrs. Chace)
[Adopted February 18, 1983.]

Requesting West Virginia University to make an in-depth study of the role of advanced technology in the economic development of this State and to formulate a long-term economic plan for the State for promoting advanced technology enterprises as well as encouraging industries and businesses already in this State to remain and expand.

WHEREAS, Promoting the growth of advanced technology is a crucial part of West Virginia's future economic development in that advanced technology will spawn new enterprises as well as modernize and expand the scope of our traditional industries; and

WHEREAS, Certain areas of this State are especially suited for advanced technology enterprises; and

WHEREAS, The health and development of the economy depends both on enhancing industries already established in this State and on attracting new industries; and

WHEREAS, Promoting the growth and diversification of West Virginia's economy requires long-range planning; therefore, be it
Resolved by the Legislature of West Virginia:

That West Virginia University by and through its President is hereby requested to appoint a task force to make a study and formulate a long-range economic plan for the State of West Virginia to stimulate research, development and training in advance technology and to modernize and expand the scope of traditional industries, such as coal, manufacturing, tourism, etc.; and, be it

Further Resolved, That the task force, once appointed, submit a proposal including cost estimates to the Joint Committee on Government and Finance within forty-five days of the adoption of this resolution. The Joint Committee on Government and Finance may accept or reject the submitted proposal; and, be it

Further Resolved, That if the proposal is accepted by the Joint Committee on Government and Finance, the task force shall report its findings, recommendations and proposals to the Joint Committee on Government and Finance on or before eight months following the date upon which the proposal is accepted, as aforesaid, the expenses necessary to conduct such a study and to develop a long-range economic plan to be paid from the legislative appropriation made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 8

(By Mr. McGraw, Mr. President, Mr. Tonkovich, Mr. Nelson, Mr. Boettner, Mr. Holliday, Mr. Heck, Mrs. Chace, Mr. Cook, Mrs. Lucht and Mr. Kaufman)

[ Adopted February 18, 1983.]

Memorializing Congress to adopt a resolution requesting the President of the United States to propose to the Union of Soviet Socialist Republics a mutual and verifiable nuclear weapons moratorium.

WHEREAS, The greatest challenge facing the earth is to prevent the occurrence of nuclear war by accident or design; and

WHEREAS, The nuclear arms race is dangerously increasing the risk of a holocaust which would be humanity's final war; and
WHEREAS, The United States of America and the Union of Soviet Socialist Republics already have a combined total arsenal in excess of fifty thousand nuclear weapons; and

WHEREAS, An all-out nuclear exchange between said two nations would result in the deaths of millions of Americans and Soviet citizens and would result, throughout the entire world, in death, injury and disease on a scale that has no precedent in the history of human experience; and

WHEREAS, There is widespread agreement that the United States of America and the Union of Soviet Socialist Republics currently have equal nuclear fighting capabilities with neither nation having a distinct advantage over the other; and

WHEREAS, An immediate halt in the testing, production and deployment of new nuclear weapons would help secure world peace and avoid the possibility of a nuclear conflagration and would save our nation, over the next ten years, billions of dollars in military expenditures, which savings could be used to help balance the federal budget, reduce taxes, create employment and improve human services; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States adopt a resolution requesting that the President of the United States propose to the government of the Union of Soviet Socialist Republics a mutual and verifiable nuclear weapons moratorium by which the said two nations would agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems; and, be it

Further Resolved, That the West Virginia delegation to the Congress of the United States introduce such a resolution or join with other members of Congress in its introduction; and, be it

Further Resolved, That copies of this resolution be sent to the Clerk and Speaker of the United States House of Representatives, the Secretary and Majority Leader of the United States Senate, and to each member of the West Virginia Congressional delegation.
SENATE CONCURRENT RESOLUTION NO. 19
(By Mr. Tonkovitch, Mr. Wright, Mr. Chernenko, Mr. Ash,
Mr. Sacco, Mr. Heck, Mr. Tomblin, Mr. Chafin and Mr. Loehr)

[Adopted March 3, 1983.]

Requesting the United States Department of Commerce to take
action to have the federal trade laws and regulations promptly
and vigorously enforced to prevent the illegal sales of foreign
steel in the United States.

WHEREAS, The American steel industry produces an industrial
material that is essential to the United States economy and necessary
to our national defense; and

WHEREAS, The steel industry is an important part of the West Vir­
ginia economy, providing employment for thousands of our state’s
residents; and

WHEREAS, The American steel industry and West Virginia’s coal
mining industry are linked by an important and mutually beneficial
customer-supplier relationship; and

WHEREAS, Imports of illegally traded foreign steel have played a
significant role in reducing the operating rate of the American steel
industry to barely thirty percent of capacity and forcing one hundred
seventy thousand steelworkers to be laid off from their jobs; and

WHEREAS, Imports of illegally traded foreign steel have caused un­
employment among West Virginia’s coal miners and hardship for
their families; and

WHEREAS, State government officials have joined labor and in­
dustry leaders in urging an end to the influx of illegally priced and
subsidized foreign steel; therefore, be it

Resolved by the Legislature of West Virginia:

That the United States Department of Commerce is requested to
take action to have the federal trade laws and regulations promptly
and vigorously enforced, thus rightfully ending the illegal sales of
foreign steel in this country which are strangling our domestic steel
industry; and, be it

Further Resolved, That this resolution be sent to the Secretary of
the United States Department of Commerce, each member of the West Virginia Delegation to Congress and the President of the United States.

SENATE CONCURRENT RESOLUTION NO. 21
(By Mr. McGraw, Mr. President, Mr. Ash, Mr. Boettner, Mrs. Chace, Mr. Cook, Mr. Craigo, Mr. Heck, Mr. Holliday, Mr. Kaufman, Mrs. Lucht, Mr. Nelson, Mr. Palumbo, Mr. Parker, Mrs. Spears and Mr. Tucker)

[Adopted March 1, 1983.]

Memorializing the Congress of the United States to adopt a Joint Resolution again proposing an amendment to the Constitution of the United States providing that equality of rights under the law shall not be denied or abridged by the United States, or by any state, on the basis of gender.

WHEREAS, The State of West Virginia has long recognized the principle that equality of rights under the law shall not be denied or abridged on account of sex; and

WHEREAS, In recognition of this basic tenet, West Virginia was historically and remains at the forefront of efforts to adopt and ratify an “Equal Rights Amendment” to the United States Constitution; and

WHEREAS, West Virginia has by law prohibited gender-based discrimination; and

WHEREAS, The Congress of the United States has the authority, and indeed the responsibility, to ensure that the law of the land clearly prohibits gender-based discrimination and ensures equality of rights under the law; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to adopt a Joint Resolution proposing an amendment to the Constitution of the United States that guarantees that equality of rights under the law shall not be denied or abridged by the United States, or by any state, on account of sex; and, be it

Further Resolved, That the Clerk of the Senate of West Virginia
forward copies of this resolution to each member of the West Virginia congressional delegation.

HOUSE JOINT RESOLUTION NO. 28
(By Mrs. Brown and Mr. Humphreys)
[Adopted February 23, 1983.]

Ratifying the proposed amendment to the Constitution of the United States to provide for representation of the District of Columbia in the Congress.

WHEREAS, The Ninety-fifth Congress of the United States of America at its second session by a constitutional two-thirds vote in both Houses adopted a Joint Resolution proposing an amendment to the Constitution of the United States, which Joint Resolution is in the following words:

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to provide for representation of the District of Columbia in the Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several states within seven years from the date of its submission by the Congress:

"ARTICLE..............

"SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

"SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress."
"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"SEC. 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several States within seven years from the date of its submission."

Therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia hereby ratifies this proposed amendment to the Constitution of the United States; and, be it

Further Resolved, That the Secretary of State of the State of West Virginia notify the Administrator of General Services, Washington, D. C., the President of the Senate of the United States and the Speaker of the House of Representatives of the United States of this action by forwarding to each of them a certified copy of this Joint Resolution adopted by the West Virginia Legislature.

SENATE JOINT RESOLUTION NO. 3
(By Mr. Rogers and Mr. Cook)

[Adopted February 15, 1983.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section thirty-six, article six thereof, relating to the authority of the Legislature to regulate state operated and controlled lotteries; relating to bingo; providing for county option for bingo and raffles; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment
to the Constitution of the State of West Virginia be submitted to
the voters of the State at the next general election to be held in
the year one thousand nine hundred eighty-four, which proposed
amendment is that section thirty-six, article six thereof be amended
to read as follows:

ARTICLE VI. THE LEGISLATURE.

§36. Lotteries; bingo; raffles; county option.

The Legislature shall have no power to authorize lotteries
or gift enterprises for any purpose, and shall pass laws to
prohibit the sale of lottery or gift enterprise tickets in this
State, except that the Legislature may authorize lotteries
which are regulated, controlled, owned and operated by the
State of West Virginia in the manner provided by general
law, either separately by this State or jointly or in coopera-
tion with one or more other states and may authorize state-
regulated bingo games and raffles for the purpose of raising
money by charitable or public service organizations or by the
State Fair of West Virginia for charitable or public service
purposes: Provided, That each county may disapprove the
holding of bingo games and raffles within that county at a
regular, primary or special election but once having disap-
proved such activity, may thereafter authorize the holding of
bingo games and raffles, by majority vote at a regular, primary
or special election held not sooner than five years after the
election resulting in disapproval; that all proceeds from the
bingo games and raffles be used for the purpose of supporting
charitable or public service purposes; and that the Legislature
shall provide a means of regulating the bingo games and
raffles so as to ensure that only charitable or public service
purposes are served by the conducting of the bingo games and
raffles.

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 "West Virginia State Lottery Amend-
ment" and the purpose of the proposed amendment is sum-
marized as follows: "To amend the State Constitution to per-
mit the Legislature to pass laws authorizing state operated and controlled lotteries."
Proposing an amendment to the Constitution of the state of West Virginia, amending section one-b, article ten thereof, relating to ad valorem taxation; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-two, which proposed amendment is that section one-b, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

1b. Property tax Limitation and Homestead Exemption Amendment of 1982.

1     Ad valorem property taxation shall be in accordance with
2     this section and other applicable provisions of this article
3     not inconsistent with this section.

[1079]
Subsection A—Value; Rate of Assessment; Exceptions

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at sixty percent of its value, as directed to be ascertained in this section, except that the Legislature may from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than one hundred percent of such value.

Notwithstanding the foregoing, for the first day of July, one thousand nine hundred eighty-two, and the first day of July of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for such purpose until and unless amended by the Legislature. Assessment and taxation in accord with this section shall be deemed to be equal and uniform for all purposes.

Subsection B—Determination of Value

The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the Legislature shall provide for consideration of (1) trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it may determine: Provided, That with respect to reappraisal of all property upon the base year of one thousand nine hundred eighty, such reappraisals are deemed to be valid and in compliance with this section: Provided, however, That with respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.
The results of each statewide appraisal shall upon completion be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified and published on or before the thirty-first day of March, one thousand nine hundred eighty-five, for use when directed by the Legislature.

The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

Subsection C—General Homestead Exemption

Notwithstanding any other provision of this Constitution to the contrary, the first twenty thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the Legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law.

Notwithstanding any other provision of this Constitution to the contrary, the Legislature shall have the authority to provide by general law for an exemption from ad valorem property taxation in an amount not to exceed the first twenty thousand dollars of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state, and who is under sixty-five years of age and not totally and permanently disabled: Provided, That upon enactment of such general law, this exemption shall only apply to such property in any county in which the
property was appraised at its value as of the first day of January, one thousand nine hundred eighty, or thereafter, as determined by the Legislature, and this exemption shall be phased in over such period of time not to exceed five years from the date such property was so appraised, or such longer time as the Legislature may determine by general law: Provided, however, That in no event shall any one person and his spouse, or one homestead be entitled to more than one exemption under these provisions: Provided further, That these provisions are subject to such requirements, limitations and conditions as shall be prescribed by general law.

The Legislature shall have the authority to provide by general law for property tax relief to citizens of this State who are tenants of residential or farm property.

**Subsection D—Additional Limitations on Value**

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of ten years in equal amounts annually.

The Legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

**Subsection E—Levies for Free Schools**

In equalizing the support of free schools provided by state and local taxes, the Legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to such local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and ten of this article, the Legislature may, in lieu of the exercise of such powers by the local school districts as heretofore provided, submit to the voters, by general law, a statewide excess levy, and if it be approved by the required number of voters, impose such levy, subject however to all
the limitations and requirements for the approval of such
levies as in the case of a district levy. The law submitting
the question to the voters shall provide, upon approval of
the levy by the voters, for the assumption of the obligation of
any local excess levies for schools then in force theretofore
authorized by the voters of a local taxing unit to the extent
of such excess levies imposed by the state and so as to
avoid double taxation of those local districts. The Legislature
may also by general law reserve to the school districts such
portions of the power to lay authorized excess levies as it may
deem appropriate to enable local school districts to provide
educational services which are not required to be furnished
or supported by the state. If a statewide excess levy for the
support of free schools is approved by the required majority,
the revenue from such a statewide excess levy shall be de-
posited in the state treasury and be allocated first for the
local obligations assumed and thereafter for such part of the
state effort to support free schools, by appropriation or as
the law submitting the levy to the voters shall require, as
the case may be.

The defeat of any such proposed statewide excess levy for
school purposes shall not in any way abrogate or impair any
local existing excess levy for such purpose nor prevent the
adoption of any future local excess levy for such purpose.

Subsection F—Implementation

In the event of any inconsistency between any of the pro-
visions of this section and other provisions of this Con-
stitution, the provisions of this section shall prevail. The
Legislature shall have plenary power to provide by general
law for the equitable application of this article and, as to
taxes to be assessed prior to the first statewide reappraisal,
to make such laws retroactive to the first day of July, one
thousand nine hundred eighty-two or thereafter.

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 pro-
posed amendment is hereby numbered “Amendment No. 3”
and designated as the “Property Tax Limitation and Home-
stead Exemption Amendment of 1982" and the purpose of
the proposed amendment is summarized as follows: "To
provide for assessment of property for purposes of ad valorem
taxation at sixty percent of its value upon statewide re-
appraisal; to provide for assessment of property under current
statutory law until the results of such reappraisal and to
validate such law; to provide for the determination of market
value, and to permit the Legislature by a vote of two thirds
of the members elected to each House to set higher percentages
for all classes of property; to authorize the Legislature by
general law to permit the results of any reappraisal to be
phased in over such period of time after the year in which
the reappraisal is completed in such manner as the Legislature
may specify; to provide the Legislature with the power to pro-
tect the levies for free schools and to provide for statewide
levies for such purpose; to require an exemption from ad
valorem taxation amounting to twenty thousand dollars of
assessed value of any real property or mobile home occupied
as a resident by persons who are sixty-five years of age or
older or permanently disabled; to authorize an exemption of
up to twenty thousand dollars of value for owners of homes
or mobile homes who are under sixty-five years of age and not
disabled; and to provide for a phase-in period for the latter
exemption after appraisement of property at its value as of
the first day of January, one thousand nine hundred eighty
or thereafter, as determined by the Legislature."
AN ACT to direct that certain dedicated revenues appropriated from the general revenue fund of the state to the department of health be expended for the care, treatment and rehabilitation of alcoholics; declaring the balance of funds available for such purpose.

WHEREAS, The West Virginia supreme court of appeals, in the case of McGraw v. Hansbarger, No. 15676, issued March 31, 1983, determined that section nine-c, article three, chapter sixty of the code of West Virginia, established a special revenue account of one million dollars annually which has been appropriated by budget bills since the year one thousand nine hundred sixty-nine, to be used exclusively for the care, treatment and rehabilitation of alcoholics; and

WHEREAS, The West Virginia supreme court of appeals in that case further stated that some undetermined amount remains in this account, which amount may be as much as fourteen million dollars, and has directed the commissioner of the department of finance and administration to consult with and assist the director of the department of health in the preparation of an appropriate expenditure schedule for expenditure of the revenue in such account; and

WHEREAS, No such special revenue account has ever been kept by any state agency, in either the executive or legislative branches of government, so that the sum of up to fourteen million dollars does
not actually exist for the purposes of section nine-c, article three, chapter sixty of said code; and

WHEREAS, The sum of one million dollars per year has been collected by the alcohol beverage control commissioner and paid into the general revenue fund of the state, in accordance with the requirements of section nine-c, article three, chapter sixty of said code; and

WHEREAS, All moneys in the general revenue fund of the state, in each year beginning one thousand nine hundred sixty-nine, have been appropriated through the regular budgetary process, with no specific appropriation of any general or dedicated revenues solely for the care, treatment and rehabilitation of alcoholics; and

WHEREAS, The Legislature has appropriated within Account No. 4000 of the budget of the state department of health for fiscal year one thousand nine hundred eighty-four, a line item for alcohol, drug abuse and developmentally disabled in the amount of $2,136,000; therefore

Be it enacted by the Legislature of West Virginia:

That it is expressly found and declared by the Legislature that the balance of all accrued moneys collected in dedicated revenues since the year one thousand nine hundred sixty-nine, pursuant to section nine-c, article three, chapter sixty of the code of West Virginia, and appropriated exclusively for the care, treatment and rehabilitation of alcoholics is zero; and the director of the department of health shall expend not less than one million dollars of the sum appropriated to a line item for alcohol, drug abuse and developmentally disabled for fiscal year one thousand nine hundred eighty-four, exclusively for the care, treatment and rehabilitation of alcoholics.

CHAPTER 2

(Com. Sub. for H. B. 103—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed June 2, 1983; 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 federal block grants
and other federal funds, and the state road fund, remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Governor's Office of Economic and Community Development, Account Nos. 1220, 8029 and 8031; to the State Commission on Aging, Account No. 4060; to the Department of Culture and History, Account No. 3540; to the West Virginia Library Commission, Account No. 3490; to the State Department of Highways, Account No. 6700; to the State Health Department, Account Nos. 4000, 8503, 8502 and 8506; to the Department of Welfare, Account Nos. 4050 and 9161; to the State Board of Education—Vocational Division, Account No. 2890, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The governor submitted to the Legislature an executive message, dated May 17, 1983, which contained revision of the revenue estimates and financial statements for the general revenue fund, the state road fund and the revenue sharing trust fund; and

WHEREAS, It appears from such executive message, that there now remains unappropriated balances in the general revenue fund, the state road fund and the revenue sharing trust fund, for further appropriation during fiscal year 1982-83, part of which balances are appropriated by the terms of this supplementary appropriation bill; and

WHEREAS, Article VI, section fifty-one of the West Virginia constitution requires each supplementary appropriation bill to be limited to some single work, object or purpose therein stated, the single work, object or purpose of this supplementary appropriation bill is to assist the unemployed with jobs, training and educational opportunities under a governor's emergency employment program and federal funds including moneys from the federal emergency jobs and humanitarian aid program of 1983; therefore

Be it enacted by the Legislature of West Virginia:

That Account Nos. 1220, 8029, 8031, 4060, 3540, 3490, 6700, 4000, 8503, 8502, 8506, 4050, 9161 and 2890 be established (where appropriate) and supplemented by adding the following line items or additional sums to existing line items, to chapter twenty,
acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill:

TITLE 2. APPROPRIATIONS.

Section 1a. Appropriations of federal funds.—In accordance with chapter four, article eleven, federal funds are hereby appropriated conditionally upon fulfillment of the provisions set forth in chapter five-a, article two of the code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-three.

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Federal Funds</th>
<th>State General Revenue</th>
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<tbody>
<tr>
<td></td>
<td>Emergency Jobs Program</td>
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<tr>
<td>1</td>
<td>Assistance for Dislocated Workers</td>
<td>955,813</td>
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</tr>
<tr>
<td>2</td>
<td>Weatherization Program</td>
<td>1,377,565</td>
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<tr>
<td>3</td>
<td>Park and Recreation</td>
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<td></td>
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<td>4</td>
<td>Development</td>
<td>556,700</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Energy Conservation Program</td>
<td>500,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$4,690,948</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

The purpose of the above supplemental appropriation in line item 1 is to provide funds for the development of outdoor recreation areas and facilities. The purpose of the remaining supplemental appropriations, line items 2, 3, 4 and 5 is to provide jobs for unemployed West Virginians and pay for other necessary expenses.

Any unexpended balances remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during fiscal year 1983-84.
EDUCATIONAL

32—State Board of Education—Vocational Division

Acct. No. 2890

8A To Local Entities $ 400,000

9 Total $ 400,000

The purpose of this supplemental appropriation is to correct or remove architectural barriers in public educational facilities.

Any unexpended balance remaining in the above appropriation for “To Local Entities” at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

39A—West Virginia Library Commission

Acct. No. 3490

1 Library Matching Fund (construction) Total $ 642,477

The above appropriation is to be expended for the construction of instant or outpost libraries in the following communities: Alderson, Buffalo, Bradshaw, Chapmanville, Cowen, Helvetia, Hinton, Mt. Storm, Nutter Fort, Pennsboro, Peterstown, Rainelle, Salem, Summit Point, Valley Head, War, Webster Springs and Whitesville.

Any funds remaining after the above listed projects have been fully funded may be expended to fund construction of additional libraries.

Any unexpended balance remaining in the above appropriations at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

41A—Department of Culture and History

Acct. No. 3540

1 Historic preservation $ 411,000

2 Total $ 411,000

Any unexpended balance remaining in the above appropriations at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.
59 The purpose of this supplemental appropriation is to fund the historic preservation program.

61 Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during fiscal year 1983-84.

HEALTH AND WELFARE

53—State Health Department

   Acct. No. 4000

67 1 Personal Services ________________ $ 291,145 $
68 2 Current Expenses ________________ 2,596,737
69 2A Repairs and Alterations ...... 114,173
70 3 Equipment ________________ 50,200
71 24A Capital Outlay ________________ 239,125

72 25 Total _________________________ $3,291,380 $
73
74 The purpose of the above appropriation is to provide additional services under various federal grant programs.

75 Any unexpended balance remaining in the above appropriation for “Personal Services,” “Current Expenses,” “Repairs and Alterations,” “Equipment” and “Capital Outlay” at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

57—Department of Welfare

   Acct. No. 4050

82 1 Personal Services ________________ $ 154,992 $
83 2 Current Expenses ________________ 98,109
84 4 Equipment ________________ 151,000
85 9 Emergency Assistance ________________ 582,628
86 11A To Local Entities ________________ 101,025

87 12 Total _________________________ $1,087,754 $
88
89 The purpose of this supplemental appropriation is to provide funds under the donated foods and emergency shelter programs.
Any unexpended balance remaining in the appropriation of federal funds for "Personal Services," "Current Expenses," "Equipment," "Emergency Assistance" and "To Local Entities" at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during fiscal year 1983-84.

Item 57—Department of Welfare will be hereinafter designated as the Department of Human Services.

__58—State Commission on Aging__

<table>
<thead>
<tr>
<th>Acct. No. 4060</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services $ 929 $</td>
</tr>
<tr>
<td>2 Current Expenses 591</td>
</tr>
<tr>
<td>5A To Local Entities 78,353</td>
</tr>
<tr>
<td>6 Total $ 79,873 $</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation is to provide funds under Title V of the Older Americans Act.

Any unexpended balance remaining in the above appropriation of federal funds for "Personal Services," "Current Expenses" and "To Local Entities" at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

__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 five-a, article two of the code of West Virginia, the following amounts as itemized for expenditure during the fiscal year one thousand nine hundred eighty-three.__

__102—Department of Highways__

<table>
<thead>
<tr>
<th>Acct. No. 6700</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO BE PAID FROM STATE ROAD FUND</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Funds Fiscal Year 1982-83</th>
<th>Other Revenue Fiscal Year 1982-83</th>
</tr>
</thead>
<tbody>
<tr>
<td>11A Other Federal Aid Programs—Total $</td>
<td>$ 4,581,000</td>
</tr>
</tbody>
</table>
The purpose of this supplemental appropriation is to provide funds for a program to replace or rehabilitate small bridges.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

Sec. 6a. Appropriation of federal funds.—In accordance with chapter four, article eleven, federal funds are hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter five-a, article two of the code of West Virginia, the following amounts as itemized for expenditure during the fiscal year one thousand nine hundred eighty-three.

Sec. 7a. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants and are to be available for expenditure during the fiscal year 1982-83.

138—State Health Department—Alcohol, Drug Abuse and Mental Health

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Current Expenses—Total $ 1,251,500

The purpose of this supplemental appropriation is to provide funding for additional services under the alcohol, drug abuse and mental health block grant.

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

139—State Health Department—Maternal and Child Health

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Personal Services $ 190,940

2 Current Expenses 1,578,581
21 3 Repairs and Alterations ........................................ 25,000

22 4 Total .......................................................... $1,794,521

The purpose of this supplemental appropriation is to provide
funding for additional services under the maternal and child
health block grant.

Any unexpended balance remaining in the above appropriation
at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

140—State Health Department—Preventive Health

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

32 1 Personal Services ............................................. $ 31,820

33 2 Current Expenses .............................................. 32,565

34 3 Total .......................................................... $ 64,385

The purpose of this supplemental appropriation is to provide
funding for additional services under the preventive health block grant.

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

141—Department of Welfare—Social Services

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

44 1 Current Expenses—Total ...................................... $2,657,294

The purpose of this supplemental appropriation is to provide
funding for additional services under the social services block
grant, and to further provide funding for temporary social
services jobs for unemployed West Virginians who have ex-
hausted unemployment benefits who would meet civil service
requirements and are otherwise qualified for the job classifica-
tions for which they are selected, and who will perform non-
professional services not intended to replace the services of professional social workers.

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84. Item 141—Department of Welfare—Social Services will be hereinafter designated as the department of human services—social services.

142—Office of Economic and Community Development—
Community Development
Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$8,442</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$5,000</td>
</tr>
<tr>
<td>3</td>
<td>To Local Entities</td>
<td>$5,638,558</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$5,652,000</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation is to provide funding for additional services under the community development block grant.

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

143—Office of Economic and Community Development—
Community Services
Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$12,864</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$3,836</td>
</tr>
<tr>
<td>3</td>
<td>To Local Entities</td>
<td>$317,906</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$334,606</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation is to pro-
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue funds and the revenue sharing trust fund, remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Office of Economic and Community Development, Emergency Employment, Training and Education, Account Nos. 1220 and 9721, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated May 17, 1983, which contained revisions of the revenue estimates and financial statements for the general revenue fund and the revenue sharing trust fund; and

WHEREAS, The Legislature through enactment at the First Extraordinary Session, 1983, of certain item decrease, reduction and expiration supplementary appropriation bills, thereby making available additional general revenues and revenue sharing trust fund moneys for appropriation in fiscal year 1982-83, a portion of which said moneys are hereby appropriated by the terms of this supplementary appropriation bill; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose stated therein; such single work, object or purpose of this supplementary appropriation bill is to provide for an Emergency Employment
Program for creation of immediate jobs and job training activity to aid and assist unemployed West Virginians; therefore

Be it enacted by the Legislature of West Virginia:

That Account Nos. 1220 and 9721 be established (where appropriate) and supplemented by adding the following line items and sums as specified hereafter, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, as follows:

TITLE II—APPROPRIATIONS.

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 amount, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-three.

EXECUTIVE

6A—Office of Economic and Community Development
Emergency Employment, Training and Education
Acct. No. 1220

<table>
<thead>
<tr>
<th>State</th>
<th>General</th>
<th>Revenue</th>
<th>Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1982-83</td>
</tr>
</tbody>
</table>

1. Emergency Jobs Program—Public Service Jobs—
Total ........................................ $5,150,000

2. The purpose of this supplemental appropriation is to provide jobs for unemployed West Virginians and pay for other necessary expenses.

5. Any unexpended balances remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during fiscal year 1983-84.

Sec. 6. Appropriations from revenue sharing trust fund.—The following item is hereby appropriated from the
Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1982-83.

137A—Revenue Sharing Trust Fund
Office of Economic and Community Development
Emergency Employment, Training and Education

Acct. No. 9721

Revenue Sharing Fiscal Year
1982-83

1 Emergency Jobs Program—
Public Service Jobs ................. $1,103,204

2 The purpose of the above supplemental appropriation is to provide jobs for unemployed West Virginians and pay for other necessary expenses.

5 Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

CHAPTER 4
(S. B. 8—By Mr. McGraw, Mr. President)

[Passed May 23, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of Account No. 1250, Governor's Office — Board of Investments Transfer Repayments, as appropriated by Enrolled Senate Bill No. 322, enacted January thirtieth, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated May 17, 1983, which contained revisions of the revenue estimates for the general revenue fund
of his recommended supplemental appropriations and of the general revenue fund statement; and

WHEREAS, It appears from such message that certain amounts of that supplementary appropriation will not be needed or used for repayment of principal and interest to the Board of Investments as anticipated in Enrolled Senate Bill No. 322; therefore

Be it enacted by the Legislature of West Virginia:

1. That the sum of one million dollars of the balance in Account No. 1250, available for expenditure in the current fiscal year 1982-83, as appropriated by Enrolled Senate Bill No. 322, enacted January thirtieth, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to be expired into the state fund, general revenue of the state, with such amount to be immediately available for other and further appropriation upon the effective date of this bill.

2. The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, one million dollars of the moneys in Account No. 1250, Governor's Office — Board of Investments Transfer Repayments, with such amount to be immediately available for other and further appropriation.

CHAPTER 5

(H. B. 116—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revenue fund, Account No. 1510, Auditor's Office, Social Security, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.
WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of three million six hundred thousand dollars of the balances in Account No. 1510, Auditor's Office-Social Security, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, the sum of three million six hundred thousand dollars, of the moneys in Account No. 1510, Auditor's Office-Social Security, to be immediately available for other and further appropriation.

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unex-
pended and unencumbered amounts of Account No. 5100, Department of Agriculture, as appropriated by Enrolled Committee Substitute for H. B. No. 1724, enacted March third, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Whereas, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

Whereas, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of fifty thousand dollars of the amount appropriated in line item "5a Gypsy Moth Spray Program", available for expenditure in the current fiscal year 1982-83, as appropriated by Enrolled Committee Substitute for H. B. 1724, enacted March third, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such expired amount to be immediately available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, fifty thousand dollars of the moneys in Account No. 5100, Department of Agriculture, and more particularly line item 5a thereof, designated Gypsy Moth Spray Program, with such fifty thousand dollars to be immediately available for other and further appropriation.
AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revenue fund, Department of Natural Resources, Account No. 8325-09, Investments, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of five hundred thousand dollars of the balances in Account No. 8325-09, Department of Natural Resources, including balances carried forward on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supple-
ment, amend, reduce and cause to expire out of the special revenue fund and into the state fund, general revenue of the state, the sum of five hundred thousand dollars, such moneys being formerly appropriated by the language of the "Sec. 9. Special revenue appropriations." section in the budget bill for the current fiscal year 1982-83.

CHAPTER 8

(H. B. 117—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the Revenue Sharing Trust Fund of the state certain unex­pended and unencumbered amounts of Item 1, Account No. 9721, Governor's Office, Revenue Sharing Trust Fund, as first appropriated by Chapter Two, acts of the legislature, first extra­ordinary session, 1977, and the "Sec. 5. Appropriations from revenue sharing trust fund." section thereof, and as reappropri­ated in each Budget Act thereafter, under the section of each, respectively, providing for "Reappropriations—Revenue Sharing Trust Fund." and thus brought forward and as appropriated by chapter twenty, acts of the legislature, regular session, one thou­sand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Ses­sion on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore
Be it enacted by the Legislature of West Virginia:

That the total sum of five hundred thousand dollars, being the entire balance unexpended and unencumbered in line item 1 "Gas/Coal Conversion Project", as first appropriated by Chapter Two, acts of the Legislature, first extraordinary session, 1977, and the "Sec. 5. Appropriations from revenue sharing trust fund." section thereof, to the "Governor's Office, Acct. No. 9721" and is reappropriated in each Budget Act thereafter, under the section of each, respectively, providing for "Reappropriations—Revenue Sharing Trust Fund." and thus brought forward and as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill be supplemented, amended, reduced and caused to expire into the revenue sharing trust fund of the state and with such expired amount to be immediately available for other and further appropriation in the current fiscal year 1982-83 and upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the revenue sharing trust fund of the state the entire amount of five hundred thousand dollars, being all of the moneys in Acct. No. 9721, Governor's Office and line item 1 thereof, designated "Gas/Coal Conversion Project", with such five hundred thousand dollars to be immediately available for other and further appropriation in the current fiscal year 1982-83.

CHAPTER 9

(S. B. 15—Originating in the Committee on Finance)

[Passed June 2, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Office of Economic and Community Development, Emergency Employment, Training and Education, Account
Appropriations

No. 1220; and to the West Virginia Library Commission, Account No. 3490, supplementing Enrolled Committee Substitute for House Bill No. 1150, enacted by the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

Whereas, The Governor submitted to the Legislature an Executive Message, dated May 17, 1983, which contained revisions of the revenue estimates and financial statements for the general revenue fund; and

Whereas, The Legislature through enactment at the First Extraordinary Session, 1983, of certain item decrease, reduction and expiration supplementary appropriation bills, thereby making available additional general revenues for appropriation in fiscal year 1983-84, a portion of which said moneys are hereby appropriated by the terms of this supplementary appropriation bill; and

Whereas, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose stated therein; such single work, object or purpose of this supplementary appropriation bill is to provide for an Emergency Employment Program for creation of immediate jobs and job training activity to aid and assist unemployed West Virginians; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill, be supplemented by establishing the following accounts and line items thereof in the section as hereinafter specified for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, as follows:

Title 2.—Appropriations.

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-four.
### Appropriations

**Executive**

**6A—Office of Economic and Community Development**

*Emergency Employment, Training and Education*

<table>
<thead>
<tr>
<th>Acct. No. 1220</th>
<th>State General Revenue</th>
<th>Fiscal Year 1983-84</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Emergency Jobs Program—</td>
<td>$13,079,264</td>
<td></td>
</tr>
<tr>
<td>Public Service Jobs</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2</strong> Vocational Centers’ Computer Network</td>
<td>750,000</td>
<td></td>
</tr>
<tr>
<td><strong>3</strong> Emergency Jobs Program—Parks</td>
<td>603,204</td>
<td></td>
</tr>
<tr>
<td><strong>4</strong> Total</td>
<td>$14,432,468</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of the above supplemental appropriation in line item 1 thereof is to provide jobs for unemployed West Virginians and pay for other necessary expenses. Line item 2 thereof is to furnish modern training equipment in order to train unemployed West Virginians for employment and pay for other necessary expenses. Line item 3 thereof is to provide funds for the development of outdoor recreation areas and facilities and create jobs in respect thereto and pay for other necessary expenses.

Included in line item 1, above, are the amounts equal to the total of the veto reductions made by the Governor to the budget bill for fiscal year 1983-84, less the amounts restored by decision of the Supreme Court of Appeals to Account No. 4160 and the Spencer State Hospital portion thereof, in said budget bill. So much of this appropriation in line item 1 as is equal to any further such reductions arising from any determination by the Supreme Court of Appeals in respect to any further invalid veto actions of the Governor and in connection with any case challenging such veto reductions shall not be available for expenditure from said line item 1.
EDUCATIONAL

35A—West Virginia Library Commission

Acct. No. 3490

State
General
Revenue
Fiscal Year
1983-84

1 Library Matching Fund
(construction)—Total .................. $350,000

2 The above appropriation is to be expended for the
3 construction of instant or outpost libraries in the
4 following communities: Alderson, Buffalo, Bradshaw,
5 Chapmanville, Cowen, Helvetia, Hinton, Mt. Storm,
6 Nutter Fort, Pennsboro, Peterstown, Rainelle, Salem,
7 Summit Point, Valley Head, War, Webster Springs and
8 Whitesville.

9 Any funds remaining after the above listed projects
10 have been fully funded may be expended to fund
11 construction of additional libraries.

CHAPTER 10

(H. B. 123—By Mrs. Martin and Mrs. Bledsoe)

[Passed August 17, 1983; 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 revenue sharing
trust fund remaining unappropriated for the fiscal year ending
June thirtieth, one thousand nine hundred eighty-four, to the
State Tax Department, Account No. 9781-23, supplementing
chapter twenty-nine, acts of the Legislature, regular session,
one thousand nine hundred eighty-three, known as the budget
bill.

WHEREAS, The current financial statement for the revenue sharing
trust fund, dated August 16, 1983, establishes the balance of such
fund available for appropriation; and
WHEREAS, The Legislature believes that additional funding for the State Tax Department should be given priority at this time, in providing for employment of additional auditing staff and other department personnel and in implementation of the enhanced computer system operation as specified in the Tax Department "Computer Task Force Report" of October 6, 1982; all on a level of implementation as determined by the State Tax Commissioner; and

WHEREAS, A portion of the balance available for appropriation in the revenue sharing trust fund is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, be supplemented by adding the following designated account and line item thereto and with the same to read as follows:

1

TITLE 2. APPROPRIATIONS.

2 Sec. 10a. Appropriation from Revenue Sharing Trust Fund.

3 132—Revenue Sharing Trust Fund

4 State Tax Department

5 Acct. No. 9781-23

6 1 Unclassified ................................................................. $600,000

7 The purpose of this supplementary appropriation bill is to establish an additional account to provide funds to the State Tax Department, expendable in the current fiscal year of 1983-84, and upon the effective date of the bill, and for enhanced staffing and computer system activities.

CHAPTER 11

(H. B. 124—By Mr. Smith and Mr. Murensky)

[Passed August 17, 1983; 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 revenue sharing
trust fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Department of Employment Security, Account No. 9784-09, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The current financial statement for the revenue sharing trust fund, dated August 16, 1983, establishes the balance of such fund available for appropriation; and

WHEREAS, The Legislature believes that an initial, limited pilot program for providing incentive for employment by the private sector and subsidy in respect thereto will constitute a viable introduction and initiation of this activity; and

WHEREAS, A portion of the balance available for appropriation in the revenue sharing trust fund is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, be supplemented by adding the following designated account and line item thereto and with the same to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Sec. 10a. Appropriation from Revenue Sharing Trust Fund.

3 133—Revenue Sharing Trust Fund

4 Department of Employment Security

5 Acct. No. 9784-09

6 1 Private Sector Employment Subsidy—

7 2 Limited Pilot Program ---------------- $100,000

8 The purpose of this supplementary appropriation bill is to provide limited, initial funding for activation of incentives for private sector employment as specified in Enrolled Senate Bill No. 16, acts of the Legislature, first extraordinary session, 1983.
AN ACT supplementing, amending, decreasing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of certain specified items, and clarifying language of reappropriation in the total existing accounts and general revenue appropriations of the House of Delegates, Account No. 1020; of the Joint Expenses, Account No. 1030; of the Supreme Court-General Judicial, Account No. 1110; of the Governor's Office, Account No. 1200; of the Office of Economic and Community Development, Account No. 1210; of the Auditor's Office-General Administration, Account No. 1500; of the Auditor's Office-Social Security, Account No. 1510; of the Treasurer's Office, Account No. 1600; of the State Tax Department, Account No. 1800; of the Department of Finance and Administration, Account No. 2100; of the Attorney General, Account No. 2400; of the Secretary of State, Account No. 2500; of the West Virginia Board of Regents (Control), Account No. 2790; of the West Virginia Board of Regents, Account No. 2800; of the West Virginia College of Osteopathic Medicine, Account No. 2810; of the Marshall University-Medical School, Account No. 2840; of the West Virginia University-Medical School, Account No. 2850; of the State Department of Education, Account No. 2860; of the State Board of Education-Vocational Division, Account No. 2890; of the State Department of Education-Aid for Exceptional Children, Account No. 2960; of the West Virginia Library Commission, Account No. 3500; of the Department of Culture and History, Account No. 3510; of the Department of Corrections-Central Office, Account No. 3680; of the Department of Corrections-Correctional Units, Account No. 3770; of the State Health Department, Account No. 4000; of the Department of Veterans Affairs-Veterans Home, Account No. 4010; of the Department of Human Services, Account No. 4050; of the State Health Department-Retardation Centers, Account No. 4150; of the State Health Department-Public Hospitals, Account No.
4170; of the State Board of Education-Rehabilitation Division, Account No. 4400; of the Department of Mines, Account No. 4600; of the West Virginia Air Pollution Control Commission, Account No. 4760; of the Department of Agriculture, Account No. 5100; of the Farm Management Commission, Account No. 5110; of the Department of Agriculture-Soil Conservation Committee, Account No. 5120; of the Department of Agriculture-Division of Rural Resources (Matching Fund), Account No. 5130; of the Department of Agriculture-Meat Inspection, Account No. 5140; of the Geological and Economic Survey, Account No. 5200; of the Department of Natural Resources, Account No. 5650; of the Water Development Authority, Account No. 5670; of the West Virginia Railroad Maintenance Authority, Account No. 5690; of the Department of Public Safety, Account No. 5700; of the Adjutant, General-State Militia, Account No. 5800; of the West Virginia Civil Service System, Account No. 5840; and of the Insurance Commissioner, Account No. 6160, as heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by Enrolled Committee Substitute for H. B. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of certain specified items in existing appropriated accounts in the budget bill, Enrolled Committee Substitute for H. B. 1150, for the fiscal year 1983-84; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose therein stated; such single work, object or purpose of this supplementary appropriation bill is
to decrease specified items in the budget bill for fiscal year 1983-84 and expire such funds into the state fund, general revenue, to make available sufficient moneys for an Emergency Employment Program for the state; therefore

Be it enacted by the Legislature of West Virginia:

That the specified items in the total existing accounts and general revenue appropriations of Account Nos. 1020, 1030, 1110, 1200, 1210, 1500, 1510, 1600, 1800, 2100, 2400, 2500, 2790, 2800, 2810, 2840, 2850, 2860, 2890, 2960, 3500, 3510, 3680, 3770, 4000, 4010, 4050, 4150, 4170, 4400, 4600, 4760, 5100, 5110, 5120, 5130, 5140, 5200, 5650, 5690, 5700, 5800, 5840, 6160, and the language of reappropriation under Account No. 5670, as appropriated by Enrolled Committee Substitute for H. B. No. 1150, enacted by the legislature, regular session, 1983, known as the budget bill, be supplemented, amended, decreased and caused to expire into the state fund, general revenue of the state, by reducing and decreasing the total sums for such specified line items and with such line items, as decreased, and language of reappropriation under Account No. 5670, as clarified, to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE

2—House of Delegates

5 Acct. No. 1020

6 1 Compensation of Members $ 649,000
7 4 Expenses of Members $ 425,000

8 Total $ 2,201,000

3—Joint Expenses

10 Acct. No. 1030

11 1 Joint Committee on Government
12 2 and Finance $ 3,221,425

13 5 Total $ 4,011,425
### JUDICIAL

4—Supreme Court—General Judicial

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>$13,988,620</td>
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<td>Total</td>
<td>$20,037,208</td>
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</table>

### EXECUTIVE

5—Governor's Office

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td></td>
<td>Other Personal Services</td>
<td>$896,586</td>
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<td>$1,347,331</td>
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</table>

### Office of Economic and Community Development

<table>
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<tr>
<th>Acct. No.</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td></td>
<td>Personal Services</td>
<td>$1,997,003</td>
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<td>Total</td>
<td>$9,406,815</td>
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### FISCAL

10—Auditor's Office—General Administration

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Description</th>
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<tr>
<td></td>
<td>Other Personal Services</td>
<td>$1,336,621</td>
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<td>Total</td>
<td>$2,193,788</td>
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</table>

11—Auditor's Office—Social Security

<table>
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<tr>
<th>Acct. No.</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>To match contributions of state employees for Social Security</td>
<td>$17,229,000</td>
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<td>Total</td>
<td>$17,229,000</td>
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### APPROPRIATIONS

#### 13—Treasurer’s Office

<table>
<thead>
<tr>
<th>Acct. No. 1600</th>
<th>Other Personal Services</th>
<th>$664,168</th>
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<tr>
<td></td>
<td>Total</td>
<td>$1,054,536</td>
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#### 16—State Tax Department

<table>
<thead>
<tr>
<th>Acct. No. 1800</th>
<th>Personal Services</th>
<th>$7,567,080</th>
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<tr>
<td></td>
<td>Property Reappraisal Program</td>
<td>14,925,281</td>
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<td>Total</td>
<td>$26,677,376</td>
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#### 17—Department of Finance and Administration

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<thead>
<tr>
<th>Acct. No. 2100</th>
<th>Utilities</th>
<th>$300,000</th>
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<tr>
<td></td>
<td>Total</td>
<td>$6,236,612</td>
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#### LEGAL

#### 19—Attorney General

<table>
<thead>
<tr>
<th>Acct. No. 2400</th>
<th>Other Personal Services</th>
<th>$1,561,426</th>
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<td></td>
<td>Total</td>
<td>$2,343,687</td>
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#### INCORPORATING AND RECORDING

#### 21—Secretary of State

<table>
<thead>
<tr>
<th>Acct. No. 2500</th>
<th>Other Personal Services</th>
<th>$407,271</th>
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<tr>
<td></td>
<td>Total</td>
<td>$741,726</td>
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#### EDUCATIONAL

#### 22—West Virginia Board of Regents (Control)

<p>| Acct. No. 2790 | Personal Services | $107,642,864 |</p>
<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>2800</td>
<td>Personal Services</td>
<td>$736,033</td>
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<tr>
<td>2810</td>
<td>Personal Services</td>
<td>$1,841,760</td>
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<tr>
<td>2840</td>
<td>Personal Services</td>
<td>$4,374,097</td>
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<tr>
<td>2850</td>
<td>Personal Services</td>
<td>$14,187,000</td>
</tr>
<tr>
<td>2860</td>
<td>Personal Services</td>
<td>$2,737,760</td>
</tr>
<tr>
<td>2870</td>
<td>Personal Services, Statewide Testing Program</td>
<td>$5,703,097</td>
</tr>
<tr>
<td>2880</td>
<td>Personal Services, Professional Competency Testing</td>
<td>$291,511</td>
</tr>
<tr>
<td>2890</td>
<td>Total</td>
<td>$22,831,000</td>
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<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2810</td>
<td>Statewide Testing Program</td>
<td>$756,510</td>
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<tr>
<td>2820</td>
<td>Professional Competency Testing</td>
<td>$291,511</td>
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<td>2830</td>
<td>Total</td>
<td>$4,957,355</td>
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<tr>
<td>Account Number</td>
<td>Agency Description</td>
<td>Personal Services</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>2890</td>
<td>29 - State Board of Education - Vocational Division</td>
<td>$358,689</td>
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<tr>
<td>2960</td>
<td>32 - State Department of Education - Aid for Exceptional Children</td>
<td>$220,932</td>
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<tr>
<td>3500</td>
<td>36 - West Virginia Library Commission</td>
<td>$913,068</td>
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<td>3510</td>
<td>37 - Department of Culture and History</td>
<td>$924,863</td>
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<td>3680</td>
<td>39 - Department of Corrections - Central Office</td>
<td>$415,906</td>
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<tr>
<td>3770</td>
<td>41 - Department of Corrections - Correctional Units</td>
<td>$9,568,561</td>
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</table>
### HEALTH AND HUMAN SERVICES

#### 42—State Health Department

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>4000</td>
<td>Personal Services</td>
<td>$5,756,546</td>
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<tr>
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<td>Total</td>
<td>$44,196,971</td>
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#### 43—Department of Veterans Affairs—Veterans Home

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<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>4010</td>
<td>Personal Services</td>
<td>$1,118,017</td>
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<td>Total</td>
<td>$1,118,017</td>
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#### 46—Department of Human Services

<table>
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<tr>
<th>Account No.</th>
<th>Description</th>
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<tr>
<td>4050</td>
<td>Personal Services</td>
<td>$9,218,567</td>
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<tr>
<td></td>
<td>Total</td>
<td>$108,466,422</td>
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#### 48—State Health Department—Retardation Centers

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>4150</td>
<td>Personal Services</td>
<td>$8,544,136</td>
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<tr>
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<td>Total</td>
<td>$10,298,907</td>
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#### 50—State Health Department—Public Hospitals

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>4170</td>
<td>Personal Services</td>
<td>$11,569,287</td>
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<td>Total</td>
<td>$15,860,263</td>
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#### 51—State Board of Education—Rehabilitation Division

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>4400</td>
<td>Personal Services</td>
<td>$4,012,248</td>
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<td>Total</td>
<td>$8,945,803</td>
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### APPROPRIATIONS

#### 54—Department of Mines

<table>
<thead>
<tr>
<th>Acct. No. 4600</th>
<th>Personal Services</th>
<th>$3,363,255</th>
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<tr>
<td>8 Gas Well Certification</td>
<td>$220,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$5,579,074</strong></td>
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#### 57—West Virginia Air Pollution Control Commission

<table>
<thead>
<tr>
<th>Acct. No. 4760</th>
<th>Personal Services</th>
<th>$531,104</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$696,940</strong></td>
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#### AGRICULTURE

#### 62—Department of Agriculture

<table>
<thead>
<tr>
<th>Acct. No. 5100</th>
<th>Other Personal Services</th>
<th>$1,819,002</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,345,917</strong></td>
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#### 63—Farm Management Commission

<table>
<thead>
<tr>
<th>Acct. No. 5110</th>
<th>Personal Services</th>
<th>$950,064</th>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,540,964</strong></td>
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#### 64—Department of Agriculture—Soil Conservation Committee

<table>
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<tr>
<th>Acct. No. 5120</th>
<th>Personal Services</th>
<th>$303,084</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$666,931</strong></td>
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</table>

#### 65—Department of Agriculture—Division of Rural Resources (Matching Fund)

<table>
<thead>
<tr>
<th>Acct. No. 5130</th>
<th>Personal Services</th>
<th>$706,265</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$938,508</strong></td>
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</table>
168 66—Department of Agriculture—Meat Inspection

169 Acct. No. 5140

170 1 Personal Services ........................................ $ 348,104

171 3 Total .......................................................... $ 502,651

172 CONSERVATION AND DEVELOPMENT

173 68—Geological and Economic Survey

174 Acct. No. 5200

175 1 Personal Services ........................................ $ 1,225,106

176 6 Total .......................................................... $ 1,658,716

177 69—Department of Natural Resources

178 Acct. No. 5650

179 1 Personal Services ........................................ $ 8,663,520

180 13 Total .......................................................... $ 14,690,714

181 71—Water Development Authority

182 Acct. No. 5670

183 5 Any unexpended balance remaining in the appropriation for “Capital Outlay,” “Phase III Hardship Grants,” “Construction Grants-Phase III,” “Hardship Grants,” “Lubeck Public Service District,” “Bolair Public Service District” and “McMechen Water Project” at the close of the fiscal year 1982-83 is hereby reappropriated for expenditure during the fiscal year 1983-84.

184 6

185 7

186 8

187 9

188 10

189 11

190 72—West Virginia Railroad Maintenance Authority

191 Acct. No. 5690

192 1 Personal Services ........................................ $ 662,614

193 6 Total .......................................................... $ 799,144
<table>
<thead>
<tr>
<th>Chapter 12</th>
<th>Appropriations</th>
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</thead>
<tbody>
<tr>
<td>194</td>
<td><strong>PROTECTION</strong></td>
</tr>
<tr>
<td>195</td>
<td><strong>73—Department of Public Safety</strong></td>
</tr>
<tr>
<td>196</td>
<td>Acct. No. 5700</td>
</tr>
<tr>
<td>197</td>
<td>1 Personal Services $14,030,943</td>
</tr>
<tr>
<td>198</td>
<td>6 Total $23,158,537</td>
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<tr>
<td>199</td>
<td><strong>74—Adjutant General—State Militia</strong></td>
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<tr>
<td>200</td>
<td>Acct. No. 5800</td>
</tr>
<tr>
<td>201</td>
<td>1 Personal Services $225,587</td>
</tr>
<tr>
<td>202</td>
<td>8 Property Maintenance 928,795</td>
</tr>
<tr>
<td>203</td>
<td>9 State Armory Board 2,483,142</td>
</tr>
<tr>
<td>204</td>
<td>11 Total $4,760,059</td>
</tr>
<tr>
<td>205</td>
<td><strong>MISCELLANEOUS BOARDS AND COMMISSIONS</strong></td>
</tr>
<tr>
<td>206</td>
<td><strong>75—West Virginia Civil Service System</strong></td>
</tr>
<tr>
<td>207</td>
<td>Acct. No. 5840</td>
</tr>
<tr>
<td>208</td>
<td>1 Personal Services $778,177</td>
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<tr>
<td>209</td>
<td>4 Total $1,017,647</td>
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<tr>
<td>210</td>
<td><strong>81—Insurance Commissioner</strong></td>
</tr>
<tr>
<td>211</td>
<td>Acct. No. 6160</td>
</tr>
<tr>
<td>212</td>
<td>1 Personal Services $591,658</td>
</tr>
<tr>
<td>213</td>
<td>4 Total $810,272</td>
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</table>
AN ACT supplementing, amending, decreasing and causing to expire into the state fund, general revenue of the state, certain unex­pended and unencumbered amounts of a certain item in the account and total existing general revenue appropriation of the State Health Department-Mental Hospitals, Account No. 4160, heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of certain specified items in existing appropriated account in the budget bill, Enrolled Committee Substitute for H. B. No. 1150, for the fiscal year 1983-84; and

WHEREAS, The Supreme Court of Appeals of West Virginia in its decision in respect to Spencer State Hospital held that the veto action of the Governor on this account was invalid and therefore that the Clerk of the House of Delegates was to print such account as enacted by the Legislature in said Enrolled Committee Substitute for H. B. No. 1150, the budget bill; and

WHEREAS, Such account, as directed printed by the Supreme Court of Appeals, is hereby decreased and amended by this supplementary appropriation bill in order to partially make available funds for the Emergency Employment Program; therefore
Be it enacted by the Legislature of West Virginia:

That certain of the sums of items 1 and 9 in the total existing appropriation of the State Health Department-Mental Hospitals, Account No. 4160, as appropriated by Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill, be supplemented, amended, decreased and caused to expire into the state fund, general revenue of the state, and with the sums remaining and appropriated in such items and in the other unreduced line items in such account to thereafter read as follows:

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND HUMAN SERVICES

49—State Health Department—Mental Hospitals

Acct. No. 4160

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$18,453,471</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$5,984,063</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$276,220</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$247,240</td>
</tr>
<tr>
<td>5</td>
<td>Student Nurse Affiliation</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Program (Huntington)</td>
<td>$71,782</td>
</tr>
<tr>
<td>7</td>
<td>Psychiatric Training Center—</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Student Nurses (Weston)</td>
<td>$219,971</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$25,252,747</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, decrease and cause to expire into the state fund, general revenue of the state, a part of the sum formerly appropriated to line item 1 in Account No. 4160, State Health Department-Mental Hospitals, and with such decreases and expired amount to be available for other and further appropriations.
CHAPTER 14

(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four-a and ten-a, all relating to the civil service system for employees of the state generally; the classification of employees and positions within such system; requiring the joint committee on government and finance to study civil service coverage of employees of the board of regents; the removal of the prohibition against the extension of civil service coverage to certain employees of the alcohol beverage control commissioner, the department of highways, and all custodians, janitors and laborers employed by any covered agency of the state; specifying the date by which such employees are to be placed within the classified service; specifying certain conditions with respect to the entry of all such persons and persons brought within the classified service by the provisions of certain executive orders; specifying and establishing conditions under which employees within the classified-exempt service who are laid off due to a reduction in force because of lack of funds may be rehired within the classified service; clarifying the rate of compensation with respect to such rehired employees; providing special provisions for reduction in force termination of covered employees; requiring the director to provide instruction in civil service procedures for supervisory personnel; prohibiting favoritism or discrimination because of political or religious opinion, affiliation or race; relating to and limiting certain political activity by employees; prohibiting employees from performing services for any political party, committee or candidate for compensation other than expenses; prohibiting employees from using authority to influence political activity; prohibiting employees from coercing or commanding others to make contributions for political purposes; prohibiting a classified employee from being a candidate for or holding certain paid public offices, from being a candidate or delegate to any
political party convention, or from being a member of any political party committee or a financial agent or treasurer for election purposes; allowing a classified employee to be an officer of a political club; when classified employee may be a candidate for political office; requiring employee who becomes a candidate for political office to take leave of absence; and requiring civil service commissioner to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections four-a and ten-a, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exceptions.

§29-6-4a. Conditions for reinstatement of certain employees.

§29-6-10a. Reduction in work force.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

§29-6-4. Classified-exempt service; additions to classified service; exceptions.

(a) The classified-exempt service comprises all positions not included in the classified service and those positions specifically excepted from the classified service as provided in this section.

In no event shall persons employed by the board of regents be considered as included in either the classified or classified-exempt service: Provided, That the joint committee on government and finance shall direct a special study for the purpose of consideration by the Legislature of including any persons employed by the board of regents in a civil service system.
sons employed by the board of regents to submit data, objections, suggested proposals, evidence or comments orally or in writing concerning the issue of civil service coverage. The joint committee on government and finance shall report its findings, together with any recommendations, to the Legislature on or before the first day of the regular session in the year one thousand nine hundred eighty-four.

Except for the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred eighty, and in each fourth year thereafter, the governor may, by executive order, with the written consent of the civil service commission and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include the following:

(1) The state Legislature and other officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.

(3) Excluding the policymaking positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature.

(4) All policymaking positions.

(5) Not more than fifteen employees in the office of the governor.

(6) Judges, referees, receivers, jurors and notaries public.

(7) The secretaries and clerks of each judge of a court of record.

(8) Patients or inmates employed in state institutions.
(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor.

(10) All employees assigned to the executive mansion.

(11) Superintendents of county maintenance of roads.

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety working days a year.

(13) Employees hired under the governor’s emergency employment program of 1983, or the federal emergency jobs and humanitarian aid program of 1983.

All executive orders of the governor adding to the list of positions in the classified service which were dated or issued during the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January or which are dated or issued within the same period commencing in the year one thousand nine hundred eighty, or in each fourth year thereafter, shall be null and void, and no person occupying a position added by such executive order to the list of positions in the classified service shall be entitled on account of such order to any right bestowed upon any position or person within the classified service by the provisions of this article or by any rule or regulation promulgated thereunder.

Nothing herein shall be construed as precluding the appointing authorities from filling any classified-exempt position in the manner in which positions in the classified service are filled.

(b) All positions of managers and clerks of stores operated by the alcohol beverage control commissioner, all positions under the supervision of the several superintendents of county maintenance of roads, but not such superintendents, all custodians, janitors and laborers positions in any covered agency shall be included in the classified service effective
the first day of July, one thousand nine hundred eighty-three: Provided, That any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein as of the effective date of this section, or who was required to be included in the classified service by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, however, That no person required to be included in the classified service by the provisions of this subsection or by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, who was employed in any of the positions included herein as of the effective date of this section, shall be thereafter severed, removed or terminated in his employment prior to his entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

§29-6-4a. Conditions for reinstatement of certain employees.

Any present or former employee in the classified-exempt service who is or has been laid off within the fiscal year commencing the first day of July, one thousand nine hundred eighty-two, due to a reduction in force because of a lack of funds whose position was subsequently brought within the classified service by reason of the provisions of subsection (b), section four of this article or any executive order issued pursuant to subsection (a) of said section four since the first day of July, one thousand nine hundred eighty-two, or within one year of such employee being so laid off, shall, if the employing agency of such employee rehires a person or persons to the same or lower classification as that given such position in the classified service, have the following special rights for reinstatement subject to the following terms and conditions:

(1) For two years from the date of severance from employment the employee shall have the right of reinstatement
to his former or lower classification as if the employee had not been laid off and notwithstanding any registers which may exist for that classification: Provided, That the employee take and pass any required qualifying examination and otherwise comply with the regulations of the civil service commission governing employment in a position within the classified service unless the employee is reinstated to substantially the same work and upon such reinstatement has at least three consecutive years of experience as an employee of state government; and

(2) Such employee has not reached the age of seventy, been convicted of a crime involving moral turpitude since his layoff and has not developed by the date of his reinstatement a permanent physical disability rendering him incapable of performing his duties.

Nothing in this section shall be construed to require that an employee who has been reinstated following a layoff be compensated at a rate in excess of that rate of compensation attributable to the position in the classified service to which such employee has been reinstated, irrespective of the position or rate of compensation held or received by such employee prior to such layoff or that such employee had held a higher position in the classified service prior to such layoff and had received a higher rate of compensation.

§29-6-10a. Reduction in work force.

Notwithstanding any other provision of this article or any rule promulgated thereunder to the contrary, an employee in the classified service who has performed work for a reasonable period of time in a position with a classification that is higher than the position in which he is employed and classified may, in the event that his regular position would be terminated as a result of a reduction in force in his division, have the right to request that his classification be reviewed and that he be promoted to the higher classified position by passing a qualifying examination for such higher position and providing sufficient evidence of his work periods and satisfactory performance of the duties and responsibilities of the higher classified position.
The commission shall provide by legislative rule for the maintenance of records by all covered agencies of the work periods and rating of job performance of employees performing work in a position or positions with a classification that is higher than the position in which he is employed and classified and the duration of work periods required to request review and promotion.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this article and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the director or the commission may request for any purpose of this article. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or appropriate to secure compliance with this article and the rules and orders thereunder. The director has the duty to conduct schools, seminars or classes regarding handling of complaints, disciplinary matters and operation of civil service system for supervisory employees of the state. The department head of each department shall designate certain supervisory employees to attend said schools, seminars or classes.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.
(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

(d) No employee in the classified service or member of the commission or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section shall be permitted.

(f) Political participation pertaining to constitutional
amendments, referendums, approval of municipal ordinances or activities shall not be deemed to be prohibited by the foregoing provisions of this section.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy and upon such other terms and conditions as may be prescribed by legislative rule to be promulgated by the civil service commission no later than the first day of September, one thousand nine hundred eighty-four.

CHAPTER 15

(Com. Sub. for S. B. 10—By Mr. McGraw, Mr. President)

[Passed June 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section eight, article six-b of said chapter; to amend article three, chapter four of said code by adding thereto a new section, designated section three-b; to amend said chapter eleven by adding thereto a new article, designated article one-a; to amend and reenact sections two and ten, article three of said chapter eleven; to further amend article three of said chapter eleven by adding thereto a new section, designated section thirty-one; to amend and reenact sections three and seven, article six-b of said chapter eleven; and to amend and reenact section six, article twenty-two of said chapter eleven, relating to property taxation generally; providing for the reappraisal of property for the periodic statewide reappraisals mandated by section one-b, article X of the constitution of West Virginia; repealing a section of the code requiring the owner of property to list property subject to taxation under oath; repealing the section of the code which provides for state reimbursement of local levying bodies for revenues lost by reason of the increase in the homestead property tax exemption; directing the joint committee on government and
finance to study matters relating to legislation required by the property tax limitation and homestead exemption amendment of one thousand nine hundred eighty-two, and make recommendation thereon, and to study alternate methods of determining what property should be subject to ad valorem property taxation; describing the manner in which the tax commissioner is to appraise property for the statewide reappraisal; prescribing the powers and duties of the tax commissioner regarding statewide reappraisals; authorizing the tax commissioner to seek enforcement of penalties for failure of assessors or appraisers to perform duties; granting subpoena power to the tax commissioner in aid of the purposes of said article one-a; granting power to the tax commissioner to promulgate rules and regulations to carry out and enforce the provisions of said article one-a, chapter eleven; establishing a base year for the first statewide reappraisal; defining terms; requiring returns and prescribing other methods for identifying property subject to taxation; describing those persons who are required to make return; excepting certain property from listing or appraisal; requiring supplemental information to be filed relating to depreciation of property; providing that certain valuations shall not be taken as certified or given under oath; establishing methods for ascertaining the assessed value of all property as of the first day of July, one thousand nine hundred eighty-three; providing for the collection of information relating to subsequent alterations in property and economic changes; prescribing the method for valuing farm property; requiring the tax commissioner to propose a legislative rule which describes the methods whereby certain classes or species of property will be valued; describing the division of functions between the tax commissioner and assessors; directing that persons registered with the West Virginia department of employment security job service program be given first preference for positions; establishing residency requirements for certain employees; permitting the tax commissioner to revise information concerning property values so as to achieve uniformity; establishing safeguards to assure fair treatment of persons whose property is being assessed; providing for the release of information concerning reappraised values; requiring the tax
commissioner to propose a legislative rule whereby adjustments are to be made in reappraisals due to alterations in property; providing for certification of reappraisals; prohibiting further reappraisals under chapter eighteen of this code until after certification of the first statewide reappraisal; providing for the appraisal of property by the tax commissioner and the delivery of appraisal information to county officials; providing for administrative review of appraisal by the tax commissioner; providing for review and hearing by the county commission; providing for judicial review by writ of certiorari; requiring subsequent statewide appraisals at least every ten years; mandating agencies of state and local governments to cooperate with the tax commissioner in reappraising property; requiring the tax commissioner to establish a statewide electronic data processing system network; providing for the phase-in of increases in assessed valuations over a ten-year period; providing for the confidentiality of the property tax returns, return information and other information obtained by subpoena or subpoena duces tecum and setting forth penalties for violation of confidentiality; requiring the tax commissioner to develop appraisal manuals for use in making statewide reappraisals; setting forth penalties and forfeitures for failure to list property for appraisal; requiring corporations to report property under oath to the tax commissioner; creating the West Virginia appraisal control and review commission and defining the term of existence thereof; prescribing the duties of said commission; requiring the tax commissioner to provide services, staff and equipment to the commission; providing for the nomination and appointment of commission members; providing for the removal of such members and the filling of vacancies; authorizing compensation and payment of expenses of commission members; describing the composition of commission subcommittees; establishing an appraisement manual review subcommittee and a computer technology review subcommittee; providing for compensation of subcommittee members; empowering the commission to issue cease and desist orders; authorizing the governor to rescind or modify cease and desist orders; providing for meetings of the commission and establishing a quorum therefor; providing for the treatment and disposition of tax-
payer complaints; describing certain requirements for review appraisal; establishing qualifications for review appraisers with respect to residential property; providing that review appraisers shall be competent witnesses in proceedings relating to appraisal of property; setting forth requirements for employment of state employees and employees of designated agents; setting forth legislative findings with respect to employment requirements; requiring the modification of the existing contract for the mass appraisal of residential properties and other reappraisal services; exempting certain appraisal employees of the state tax department from civil service; providing for severability of the provisions of article one-a, chapter eleven of the code; describing the methods by which assessors carry out their work of assessment; setting forth penalties and forfeitures for failure to list property for taxation in annual assessment procedures and removing the requirement that such listing be under oath; ratifying, approving and confirming the usual practices and procedures of assessors prior to the second day of July, one thousand nine hundred eighty-two; allowing a twenty thousand dollar homestead exemption for certain residential property; describing how such homestead exemption shall be entered upon the property books and stating when taxes shall not be levied; and modifying the requirements concerning the declaration of consideration or value appended to instruments of conveyance so as to require certain additional information.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article six-b of said chapter be repealed; that article three, chapter four of said code be amended by adding thereto a new section, designated section three-b; that said chapter eleven be amended by adding thereto a new article, designated article one-a; that sections two and ten, article three of said chapter eleven be amended and reenacted; that said article three, chapter eleven be further amended by adding thereto a new section, designated section thirty-one; that sections three and seven, article six-b of said chapter eleven be amended and reenacted; and that section six, article twenty-two of said chapter eleven be amended and reenacted, all to read as follows:
Chapter
4. The Legislature.
11. Taxation.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3b. Duty of the joint committee on government and finance with respect to the statewide reappraisal to be completed on the thirty-first day of March, one thousand nine hundred eighty-five.

The joint committee is hereby directed to study during the calendar years one thousand nine hundred eighty-three and one thousand nine hundred eighty-four, any and all matters upon which legislation is required by the property tax limitation and homestead exemption amendment of one thousand nine hundred eighty-two, and any matters upon which, in the joint committee's judgment, legislation may become necessary with respect thereto, including a study of the desirability of this state converting, for purposes of determining the property subject to ad valorem property taxation, to an averaged annual value method or pro rata value method as opposed to a tax-status-day value method. The committee shall report to the Legislature any recommendations which it may deem proper, along with legislation to effectuate those recommendations.

CHAPTER 11. TAXATION.

Article
1A. Appraisal of Property for Periodic Statewide Reapraisals.
3. Assessments Generally.
6B. Homestead Property Tax Exemption.
22. Excise Tax on Privilege of Transferring Real Property.

ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATEWIDE REAPPRAISALS.

§11-1A-1. Tax commissioner to appraise property to ascertain value; relating to reappraisal to specified base year; powers and duties of tax commissioner regarding statewide reappraisals.

§11-1A-2. Base year for first reappraisal.

§11-1A-3. Definitions.

§11-1A-4. Identification of property to be appraised; persons required to make return.
§11-1A-5. Property excepted from listing for appraisal.
§11-1A-6. Supplemental information required to be filed.
§11-1A-7. When valuations not certified.
§11-1A-8. Ascertainment of assessed value as of the first day of July, one thousand nine hundred eighty-three.
§11-1A-9. Subsequent alterations in property; economic change.
§11-1A-10. Valuation of farm property.
§11-1A-11. Valuation of certain classes or species of property; reserve coal properties; oil producing properties; gas producing properties; timberland; active mining mineral interest; commercial real property and industrial land; commercial and industrial furniture, fixtures, machinery and equipment; intangible personal property; public utility property; vehicles, watercraft and aircraft.
§11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.
§11-1A-14. Release of results of statewide reappraisal; legislative rule regarding changes in quality or quantity of property; publication and certification of statewide reappraisal.
§11-1A-15. Appraisal of property; lists to county officials.
§11-1A-16. Administrative review of appraisal.
§11-1A-17. Review of appraisal by the county commission sitting as an administrative appraisal review board.
§11-1A-18. Review by circuit court on certiorari.
§11-1A-19. Subsequent statewide reappraisals required.
§11-1A-20. Cooperation of other agencies of state and local government.
§11-1A-21. Electronic data processing system network for property tax administration.
§11-1A-22. Phase-in, determination thereof, application and limitations.
§11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.
§11-1A-25. Failure to list property, etc.; collection of penalties and forfeitures.
§11-1A-26. Appraisal of corporate property; reports to tax commissioner by corporations.
§11-1A-27. West Virginia appraisal control and review commission created; term of existence defined; duties of commission; tax commissioner to provide services, staff and equipment; nomination and appointment of members; removal of members and filling of vacancies; compensation and expenses; composition of subcommittees of commission; appraisement manual review subcommittee; computer technology review subcommittee; compensation of subcommittees; issuance of cease and desist orders by commission; authority of governor to rescind or modify cease and desist orders; meetings of commission; quorum; taxpayer complaint and the treatment and disposition thereof.
§11-1A-28. Review appraisal requirements; qualifications of review appraisers with respect to residential property; review appraisers to be competent witnesses.

§11-1A-29. Requirements for state employees and employees of designated agents; legislative findings; modifications of existing contract for mass appraisal; exemption of certain appraisal employees of tax commissioner from civil service.

§11-1A-30. Severability.

§11-1A-1. Tax commissioner to appraise property to ascertain value; relating reappraisal to specified base year; powers and duties of tax commissioner regarding statewide reappraisals.

1 (a) In conducting the reappraisals of property mandated by the West Virginia Constitution and required by this article, the tax commissioner shall appraise all property so as to ascertain the value thereof for assessment purposes, relating such reappraisal to a specified base year in a manner which is uniform for all classes of property and all counties.

(b) It shall be the duty of the tax commissioner to see that the laws concerning the periodic statewide appraisal of property are faithfully enforced. He shall prepare all proper forms and books for the use and guidance of appraisers and assessors, and shall perform all such other duties as may be required by law. He shall from time to time visit the several counties and shall inspect the work of the appraisers and the several assessors and shall confer with them respecting such work for the future. In such conference, or by writing or otherwise, he may inquire into the proceedings of any such officer, make to him such suggestions respecting the discharge of his duty as may seem proper, and give such information and require such action as will cause all property subject to ad valorem property taxation to be appraised at its market value.

(c) The tax commissioner may appoint competent persons to appraise property values, and may employ experts to examine and report upon the different kinds and classes of property in the state, with a view to ascertaining the value thereof for appraisal and assessment purposes, to the end that he may furnish to county assessors, county commissions and the state board of public works more accurate information, and more effectively aid and
supervise the assessors and the county commissions in their work of assessment and valuation of property for purposes of taxation.

(d) Upon the application of any officer concerned with the assessment or collection of taxes, the tax commissioner shall, as to any matter specified by such officer, make like suggestions and give like information. In case of the failure of any appraiser or assessing officer in the discharge of any duty imposed upon him by law, the said commissioner shall, after due notice to any such assessor or collecting officer, proceed to enforce such penalty as may be provided by law, including, in any proper case, the removal of such officer, and to that end the commissioner is authorized to appear before any court or tribunal having jurisdiction. In any proceeding to enforce a penalty, if a hearing for an assessor or collecting officer is not otherwise provided by law, then such assessor or collecting officer shall be afforded a hearing by the tax commissioner in accord with the provisions of article five, chapter twenty-nine-a of this code. The commissioner may cause the violation of any law respecting the appraisal of property subject to ad valorem property taxation to be prosecuted. He may also be heard before any court, council or tribunal, in any proceeding in which an abatement of taxes is sought. The commissioner shall, inter alia, have the power to accept bids, award contracts, requisition funds appropriated for his expenditure, and require the cooperation of other state and local officials. In awarding such contracts the tax commissioner shall require that provision be made for such indemnity, bond or contract of insurance as will be sufficient, in the tax commissioner's judgment, to hold the state harmless.

(e) For the efficient administration of the powers vested in the tax commissioner by this section, the commissioner shall have the power to issue subpoenas and subpoenas duces tecum, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. Every such subpoena and subpoena duces tecum shall be served at least fifteen days before the return date thereof by personal service made by any person over eighteen years of age.
Service of subpoenas and subpoenas duces tecum shall be the responsibility of the commissioner. Any persons, except a person in the employ of the state tax department, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Upon motion made promptly, and in any event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the “West Virginia Rules of Civil Procedure for Trial Courts of Record,” could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the commissioner shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from circuit court or a refusal to testify therein. Witnesses subpoenaed under this subsection shall testify under oath or affirmation.

(f) The tax commissioner may prescribe all necessary forms and promulgate such rules and regulations as he believes necessary to carry out and enforce the provisions of this article. Such rules and regulations shall be subject to the provisions and requirements of the state administrative procedures act in chapter twenty-nine-a of this code: Provided, That all rules and regulations of the tax commissioner regarding ad valorem property taxes presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by
the commissioner in the manner prescribed by law, or 
abrogated by the enactment of this article or other statutory 
provisions of this code.

(g) The tax commissioner is hereby directed to 
cooperate with the joint committee on government and 
finance of the Legislature in its review, examination and 
study of the implementation of the property tax limitation 
and homestead exemption amendment of one thousand 
nine hundred eighty-two, section one-b, article ten of the 
constitution of West Virginia, and any other similar studies 
which may arise under the authority granted to the joint 
committee on government and finance under the provisions 
of section three-b, article three, chapter four of this code. 
The tax commissioner shall continuously monitor and 
ensurce the requirements of this article relating to the 
employment qualifications of employees of the state and its 
designated agents, and at least quarterly shall ascertain 
whether such requirements are being met and report 
thereon to the joint committee on government and finance. 
Not less than monthly, the tax commissioner shall report to 
the joint committee on government and finance or its 
designated subcommittee on any matters considered or 
action taken by the West Virginia appraisal control and 
review commission, or any matters relating to the 
reappraisal otherwise pertinent or of interest to the joint 
committee on government and finance. On or before the 
fifteenth day of January, one thousand nine hundred 
eighty-four, the tax commissioner shall report to the joint 
committee on government and finance on the benefits, 
desirability and disadvantages, as well as the alternative 
methods available, for the possible implementation of 
section fifty-three, article VI of the constitution of West 
Virginia, the forestry amendment.

§11-1A-2. Base year for first reappraisal.
1 The base year for the first statewide reappraisal shall be 
2 the year one thousand nine hundred eighty-three.

§11-1A-3. Definitions.
1 As used in this article, unless the context clearly requires 
2 a different meaning:

3 (a) "Assessed value" of any item of property is its 
4 assessed value after the certification of the first statewide
reappraisal and shall be sixty percent of the market value of such item of property regardless of its class or species, except as hereinafter specifically provided in this article;

(b) "Base year" shall have the meaning ascribed to that term by the provisions of section two of this article;

(c) "Commission" shall mean the West Virginia appraisal control and review commission;

(d) "Commissioner" or "tax commissioner" shall mean the chief executive officer of the state tax department except in those instances where the context clearly relates to the West Virginia appraisal control and review commission, in which case "commissioner" shall mean any member of such commission;

(e) "Designated agent" shall mean a person, not directly employed by the tax commissioner, who is designated by the tax commissioner to perform reappraisal functions authorized or required by this article. Such term shall include, but not be limited to, agents and independent contractors, and nothing in this article shall be construed to alter the relationship of the state of West Virginia, or its officers, and such persons to create relationships not contemplated by agreements between the tax commissioner and such persons;

(f) "Farm" shall mean and include land currently being used primarily for farming purposes, whether by the owner thereof or by a tenant, and which has been so used for at least seasonally during the year next preceding the then current tax year, but shall not include lands used primarily in commercial forestry or the growing of timber for commercial purposes;

(g) "Farming purposes" shall mean the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow, or in timber or in wastelands;
(h) "Property situate in this state" shall mean:

(1) Property having legal situs in this state; or

(2) In the case of persons with a place of business located in this state and authorized to do business in this state and one or more other states of the United States or any foreign country:

(A) Any tangible property brought into this state from time to time or otherwise deemed to have situs in this state for purposes of ad valorem property taxation, and

(B) Any intangible property held by such person, wherever evidence thereof is situate. In the case of assessment of such intangible property for ad valorem property taxation after the first statewide reappraisal only such part thereof as may be determined by applicable law or regulation to be subject to such taxation shall be deemed to be situate in this state;

(i) "Value," "market value" and "true and actual value" shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arms length transaction without either the buyer or the seller being under any compulsion to buy or sell: Provided, That in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisement of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following factors: (1) The location of such property; (2) its site characteristics; (3) the ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements; (4) the quantity of size of the property and the impact which its sale may have upon surrounding properties; (5) if purchased within the previous eight years, the purchase price thereof and the
85 date of each such purchase; (6) recent sale of, or other
86 transactions involving, comparable property within the
87 next preceding eight years; (7) the value of such property to
88 its owner; (8) the condition of such property; (9) the income,
89 if any, which the property actually produces and has
90 produced within the next preceding eight years; and (10)
91 any commonly accepted method of ascertaining the market
92 value of any such property, including techniques and
93 methods peculiar to any particular species of property if
94 such technique or method is used uniformly and applied to
95 all property of like species.

§11-1A-4. Identification of property to be appraised; persons
required to make return.

(a) On or before the first day of December, one thousand
nine hundred eighty-three, every person who owns
property which was situate in this state on the first day of
July, one thousand nine hundred eighty-three, shall
prepare a return itemizing and describing such property,
whether real or personal, and shall file such return with the
assessor of the assessment district wherein such property is
located, except in the case of a taxpayer whose annual
return for the assessment of property is filed with some
other public officer, then the return required by this section
shall be filed with the tax commissioner who shall allocate
the contents to the appropriate counties by such means as
he determines appropriate. The form for the return shall be
designed by the tax commissioner, and shall provide a
means for the orderly listing of all property not excepted
from listing under the provisions of section five of this
article. A similar return, itemizing and listing such
property, shall also be made, at the same time, by every
person holding, possessing or controlling real or personal
property as executor, administrator, guardian, trustee,
receiver, agent, partner, attorney, president or accounting
officer of a corporation, consignee, broker, or in any
representative or fiduciary character.

(b) The return required by subsection (a) of this section
shall be made and the information furnished:

(1) With respect to an individual who is deceased, the
return of such individual required under subsection (a)
shall be made by his or her executor, administrator, or other person charged with the property of such decedent;

(2) With respect to a person under a disability who is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, committee, guardian, fiduciary or other person charged with the care of the person or property of such individual: Provided, That this subdivision shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual;

(3) With respect to a case where a receiver, trustee in bankruptcy, or assignee by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee or assignee shall make the return for such corporation in the same manner and form as corporations are required to make such returns;

(4) With respect to property of an estate or a trust, the return shall be made by the fiduciary thereof; and

(5) With respect to the property of a married person who is absent from the state, the return shall be made by his or her spouse.

(c) A return made by one or two or more joint fiduciaries shall be sufficient compliance with the requirements of this section in any case where the return is required to be made by a fiduciary.

(d) With regard to real property not excepted from listing for appraisal under the provisions of section five of this article, a summary legal description sufficient to identify and locate the property shall be given for each parcel of real estate, and, if applicable, the name of the street and number, its area, and if improved, a short statement of the character of the improvements.

§11-1A-5. Property excepted from listing for appraisal.

Bank deposits, money and household goods and personal effects, if such household goods and personal effects are not held or used for profit, are exempt from the ad valorem
property taxation and shall not be described and listed on
the forms required to be filed under the provisions of
section four of this article: Provided, That the term
"personal effects" shall include, but not be limited to,
firearms and ammunition held for personal use and not for
profit. A person shall also not list real property assessed and
listed upon the land books of the several counties for the
taxable year one thousand nine hundred eighty-three, or on
the first day of July, one thousand nine hundred eighty-
three, for the taxable year one thousand nine hundred
eighty-four.

§11-1A-6. Supplemental information required to be filed.
Every person required to file a tax return under the
provisions of article thirteen, twenty-one or twenty-four of
this chapter for the period ending on the thirty-first day of
December, one thousand nine hundred eighty-two, or for
income received or to be received during the calendar year
one thousand nine hundred eighty-three, shall file a copy of
a depreciation schedule included in a federal or state tax
return for income taxation for the taxpayer's tax year
ending on or after the first day of June, one thousand nine
hundred eighty-two, or if the person did not prepare a
depreciation schedule for such return or elects not to
disclose the schedule from the tax return, a schedule
showing property on which a deduction for depreciation
could be claimed against gross or adjusted gross income
received or receivable in the selected year, including a brief
description of such property, its basis and, to the extent the
taxpayer elects, any accumulated depreciation the
taxpayer could have claimed in such year and prior years.

§11-1A-7. When valuations not certified.
If a person is required under the provisions of this article
to fix what he deems to be the true and actual value of an
item of property, whether real or personal, and if such
valuation is not required to be made on any other tax return,
then the valuation required by this article shall not be taken
as certified or given under oath, but all other information
required to be given under the provisions of this article shall
be deemed to have been given under oath.
§11-1A-8. Ascertainment of assessed value as of the first day of July, one thousand nine hundred eighty-three.

(a) All real property assessed and listed upon the land books in the several counties as of the first day of July, one thousand nine hundred eighty-three, and property required to be described and listed pursuant to section four of this article, shall as soon as the same be returned or, if not returned, listed on the land books or otherwise identified, be categorized and systematically inventoried by the assessor of the county wherein such property is returned or returnable and by the tax commissioner in the case of property returned or returnable to the tax commissioner, for the purpose of ascertaining what the previously assessed value for each such item was or would have been as of the first day of July, one thousand nine hundred eighty-three.

The information shall be categorized and systematically inventoried in accord with requirements specified by the tax commissioner and entered into the statewide data bank established by the tax commissioner for such purpose by the officer with whom the return is to be filed. The tax commissioner shall provide for the receipt and permanent preservation of the information entered in the data bank under this section and under the provisions of section nine of this article. As to any such property not so assigned a previously assessed value, effort shall be made by the appropriate county assessor to cause a back assessment to be made for the assessment date of the first day of July, one thousand nine hundred eighty-three, and subsequent assessment dates thereafter, if such assessment would have been proper as of the first day of July, one thousand nine hundred eighty-three, or thereafter, under law applicable to assessments on such dates.

(b) Property which is exempt from taxation under the provisions of section nine, article three of this chapter shall nonetheless be listed pursuant to section four of this article, and categorized and inventoried pursuant to subsection (a) of this section, and the exemption confirmed or not confirmed.

(c) It is the intention of the Legislature in enacting this section to provide a mechanism for determining the previously assessed value of property as that term is used in
subsection D, section one-b, article X of the constitution of West Virginia, in order that such previously assessed value may be compared with the assessed value of such property following the first statewide reappraisal to determine whether there is a resulting increase which should be allocated over a period of ten years in equal amounts annually, as required by the said constitutional provision.

§11-1A-9. Subsequent alterations in property; economic change.

1 In determining the previously assessed value of any property under the provisions of section eight of this article or in determining the market value or the assessed value of property as those terms are defined in section three of this article, the appraiser or assessor shall record any information evidencing alterations in the property subsequent to the first day of July, one thousand nine hundred eighty-three, including, but not limited to, substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrences. The economic impact on the property, whether inflationary or deflationary as to value, shall be noted, but not considered to have an effect upon the previously assessed value.

§11-1A-10. Valuation of farm property.

(a) With respect to farm property, the tax commissioner shall appraise such property so as to ascertain its fair and reasonable value for farming purposes regardless of what the value of the property would be if used for some other purpose, and the value shall be arrived at by giving consideration to the fair and reasonable income which the property might be expected to earn in the locality wherein situated, if rented. The fair and reasonable value for farming purposes shall be deemed to be the market value of such property for appraisement purposes.

(b) A person is not engaged in farming if he is primarily engaged in forestry or growing timber. Additionally, a corporation is not engaged in farming unless its principal activity is the business of farming, and in the event that the controlling stock interest in the corporation is owned by
another corporation, the corporation owning the controlling interest must also be primarily engaged in the business of farming.

§11-1A-11. Valuation of certain classes or species of property; reserve coal properties; oil producing properties; gas producing properties; timberland; active mining mineral interest; commercial real property and industrial land; commercial and industrial furniture, fixtures, machinery and equipment; intangible personal property; public utility property; vehicles, watercraft and aircraft.

On or before the first day of September, one thousand nine hundred eighty-three, the tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule shall describe in detail the methods whereby the tax commissioner will determine the market value, during the first statewide reappraisal, of the following property:

1. Active and reserve coal properties;
2. Oil producing properties;
3. Gas producing properties;
4. Timberland;
5. Active mining mineral interests including limestone, fireclay, dolomite, sandstone, and other actively mined minerals;
6. Commercial real property and industrial land;
7. Commercial and industrial furniture, fixtures, machinery and equipment;
8. Intangible personal property, including stocks, accounts receivable and stocks in banks and capital of savings and loan associations;
9. Public utility property; and
10. Vehicles, watercraft and aircraft.
§11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.

(a) It is the intent of the Legislature that in carrying out the appraisal functions required by this article, the tax commissioner shall utilize the county assessors and their employees. The county clerk shall prepare a list of all transfers of real property recorded during the calendar year one thousand nine hundred eighty-three, for which payment of the excise tax on the privilege of transferring real property, required by article twenty-two of this chapter was required, and forward such list to the tax commissioner during the second month following such transfers' recording with the clerk of the county commission. The assessor shall review the land books for his county for the tax year one thousand nine hundred eighty-three and one thousand nine hundred eighty-four, and shall prepare a written property description of every parcel of real property not previously described on a property record card provided to the assessor by the tax commissioner under the provisions of section eleven, article nine-a, chapter eighteen of this code. The assessors may compile lists of comparable property sales and recommend appraisal values with respect to any property in their districts to which the tax commissioner shall give consideration when he fixes values for such property for reappraisement purposes to the extent such recommended values are supported by competent evidence.

(b) In each county during the reappraisal function, the tax commissioner shall designate a tax department employee as the coordinator of reappraisal functions among the commissioner's personnel, the commissioner's designated agents, and the assessor's personnel so as to ensure that the resulting appraisal shall be complete, equal and uniform. In each county the tax commissioner or his designated agent shall prepare a description of the number, job description and minimum qualifications of personnel needed to accomplish the reappraisal, other than permanent employees of the tax commissioner or employees
of the assessor. The tax commissioner or his designated
agent shall employ qualified individuals to fill the positions
giving first preference to persons registered with the West
Virginia department of employment security job service
program, but all such persons shall be residents of the
county, or if the tax commissioner finds it necessary for
efficiency, any contiguous county, or if none be available,
the state. The tax commissioner shall make reasonable
efforts to assure that the additional employment required
by this article is allocated equitably among the several
counties, with attention to the level of unemployment in
and the population of each county.

(c) To the extent that the tax commissioner concludes
that assessors and local employees have overemphasized or
underemphasized local aspects in determining value, the
tax commissioner may revise information concerning such
values so as to achieve uniformity in the statewide
reappraisal: Provided, That in any hearings or appeals
under the provisions of this article the assessor or employee
who participated in the gathering of such information may
be a competent witness as to how tentative values were
arrived at in the process of reappraisal before any such
revision.


The tax commissioner shall require that his employees
and any designated agent visit each parcel of land to be
reappraised and perform other functions to assure a
competent appraisal.

Upon any visit to land, no such employee, agent or
employee of the agent shall enter into a dwelling house or
the curtilage thereof, if any, unless the employee or agent
shall give written notice to an adult person then present of
the right of residents thereof to refuse such entry, nor insist
upon entry upon any other land except at reasonable times,
nor in any manner harass a person for refusing such entry or
refusing entry at an unreasonable time, nor in any other
manner intentionally harass or abuse any person incident to
any such visit.

The tax commissioner shall assure that his employees and
agents afford to all taxpayers before he certifies the
reappraisal reasonable opportunity to review and comment
in writing upon the accuracy of all real property
descriptions and other reappraisal property listings and use
reasonable means to resolve differences in such
descriptions and listings, including informal hearings,
reinspections where indicated, and written notice to any
aggrieved taxpayer of the results of such review.

Failure to comply with requirements of this section shall
not be construed to invalidate a reappraisal value once
determined and certified by the commissioner but upon any
appeal or review of such certified reappraisal any evidence
obtained in violation of the requirements of this section
may be excluded unless corroborated.

The tax commissioner shall assure that his employees and
agents maintain written records of all changes made in
property descriptions or values by reason of informal
reviews with taxpayers and all visits to land, including the
dates thereof, names of participating persons present and a
fair summary of the reasons for any changes. Such records
shall be subject to inspection and production in any
consideration of the propriety of the appraised value and
may be admissible in evidence if otherwise probative upon
the issue under consideration.

§11-1A-14. Release of results of statewide reappraisal; legis­
lative rule regarding changes in quality or quantity
of property; publication and certification of state­
wide reappraisal.

(a) As the tax commissioner completes the appraisal
process he may make the information concerning the
reappraised values available, either upon request or by
notice as hereinafter provided for in this article: Provided,
That no such information shall be made available by the tax
commissioner unless and until the same information is
available throughout the assessment district for all
property within the same class or species as the particular
property for which appraisal values are to be made
available.

(b) On or before the first day of September, one
thousand nine hundred eighty-four, the tax commissioner
shall propose a legislative rule for submission to the
Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code which rule shall describe in detail the method whereby the tax commissioner will adjust appraised values determined by the statewide reappraisal on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrences.

(c) At the time of making available information as to appraised value as provided for in this section which shall not be later than the thirty-first day of March, one thousand nine hundred eighty-five, the tax commissioner shall certify and publish such results for use when directed by the Legislature. As certifications are made and notice is given to taxpayers as provided for in section sixteen of this article, request for review, hearing and appeal under said section may proceed notwithstanding the fact that the statewide reappraisal is not completed for all classes and species of property in all counties of the state. However, none of the appraised values ascertained during the course of the statewide reappraisal of property shall be utilized for assessment purposes unless and until the statewide reappraisal is completed for all classes and species of property in all counties and the use of the results have been directed by the Legislature.

(d) Inasmuch as it is the intent of the Legislature that the tax commissioner concentrate his reappraisal efforts upon the first statewide reappraisal until it is completed, and because prior reappraisal methods and results may not be wholly consistent with the methods and results of the statewide reappraisal, the tax commissioner shall not complete, deliver or certify appraisals of nonutility real property and nonutility personal property under the provisions of section eleven, article nine-a, chapter eighteen of this code, after the effective date of this article and prior to the completion, publication and certification of the first statewide reappraisal under this article: Provided, That the tax commissioner shall not be precluded from correction of prior appraisals under the provisions of current or prior law, but this proviso shall not be construed to avoid the other provisions of this paragraph.
§11-1A-15. Appraisal of property; lists to county officials.

(a) All real property assessed, or which should have been assessed, as of the first day of July, one thousand nine hundred eighty-three, and all property described and listed pursuant to section four of this article, shall be appraised by the tax commissioner at its value as defined in this article, in order that the tax commissioner may comply with the requirement of section one of this article.

(b) As appraisals are completed and notices given in accordance with the provisions of section sixteen of this article, lists of the property appraised, the owners and valuations shall be delivered to the assessor, the county commission and the sheriff of the county wherein the appraised property is liable to assessment.

§11-1A-16. Administrative review of appraisal.

(a) Upon receipt by the assessor of the lists of property appraised and the owners and the valuations thereof, as provided by section fifteen of this article, the assessor shall forthwith cause a notice to be given in the form of a Class I-0 legal advertisement which advises that the appraisal of property within the county is or has been completed and that the results thereof are available to any person interested therein in the office of sheriff of the county wherein the property is located. After such advertisement has been made, the assessor shall forthwith mail to each owner, a notice of the amount of such valuation. The notice shall be addressed to the person or persons in whose name any such property is assessed or who is liable, and shall be mailed to the address of such person or persons as reflected upon the tax tickets in the office of the sheriff of the county wherein such property is located. Such notice shall be in a form prescribed by the tax commissioner and shall inform the owner that if he desires to challenge such valuation he must inform the tax commissioner within twenty-one days of the date of such notice, in writing, of his intention to so challenge the valuation.

(b) If the owner mails such writing to the tax commissioner within twenty-one days of the date of the notice of valuation, the tax commissioner shall, within thirty-five days after the date of the notice of valuation,
provide the owner and the assessor with a written statement of the information upon which the tax commissioner relied in making such appraisal.

(c) Within twenty-one days after the date of the written statement of information furnished by the tax commissioner as provided in subsection (b) of this section, the owner may request the tax commissioner to review the valuation of this property. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the tax commissioner to make the redetermination described in subsection (d) of this section.

(d) After a request for review is made under subsection (c) of this section, the tax commissioner shall determine whether or not (1) the process of making the appraisal is reasonable under the circumstances, and (2) the amount of valuation of the appraised property is appropriate under the circumstances. In determining whether the appraisal is reasonable and the amount of the valuation appropriate, the tax commissioner shall take into account not only information available at the time the appraisal was made but also information which subsequently becomes available. The tax commissioner shall notify the owner and the assessor of his determination made under this subsection.

(e) If, at any time prior to making the determination required by subsection (d) of this section, the tax commissioner shall conclude that an appraised value is incorrect as a result of a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of the exercise of judgment, he may correct such error or mistake and shall give notice thereof to the taxpayer, and the appropriate assessor, county commission and sheriff to whom lists of appraisals have been provided in accordance with section fifteen of this article.

(f) The assessor shall be reimbursed by the tax commissioner for the postage expended to mail the notices required by this section. Such forms and envelopes as may be required shall be furnished by the tax commissioner.
Whenever the property has been returned or is returnable to the tax commissioner, the tax commissioner shall perform the duties imposed upon the assessor by this section. In such case, the tax commissioner shall specify in such notice the county in which a review of such appraisal shall be heard. The tax commissioner shall specify the county in which he determines that a larger portion of the property appraised is or is usually situate and his determination thereof shall be final.

§11-1A-17. Review of appraisal by the county commission sitting as an administrative appraisal review board.

(a) Within thirty days after the earlier of (1) the day the tax commissioner notifies the owner of his determination described in subsection (d) of the preceding section, or (2) the twenty-first day after the request described in subsection (c) of the preceding section was made, the owner may petition for a hearing of record before the county commission of the county in which the larger portion of the appraised property is liable to assessment for ad valorem property taxation. Contemporaneously with the filing of the petition with the county commission, the owner shall mail a copy of the petition to the tax commissioner and the assessor, and the petition shall have endorsed or appended to it a certificate by the owner or his attorney that such copies were mailed.

(b) The county commission shall sit as an administrative appraisal review board, shall hear such testimony, under oath, as the owner, the tax commissioner and other witnesses may offer, and shall make a true record of the testimony by nonstenographic electronic recording suitable to assure that the recorded testimony will be accurate and trustworthy. Upon making such true record and preserving the other evidence presented, the commission shall determine whether the amount of value fixed by the appraisal of the property is correct under the circumstances. If the county commission finds the appraisal to be correct it shall enter an order approving the value as appraised and adopting by reference the determination and reasons made by the commissioner under subsection (d), section sixteen of this article. If the county commission
determines that the amount of value fixed by the appraisal of the property is incorrect, and if sufficient evidence has been presented to permit correction of the appraisal, the county commission shall correct the appraisal and fix the value of the appraised property. If the county commission shall find that the evidence is not sufficient to determine the correct value, the county commission shall direct the parties to develop and present such evidence, and may continue the hearing from time to time for this purpose until there be evidence before it sufficient to fix the correct value. Upon making a determination, the county commission shall enter an order and inform the parties in writing, setting forth in summary form the reasons for such determination.

(c) Any person who is a taxpayer of ad valorem property taxes in any West Virginia county may protest an appraisal of property under this article for good cause alleged and shown. A person desiring to protest a reappraisal of property shall petition for a hearing before the administrative appraisal review board in the same manner as an owner would petition for hearing with regard to the appraisal of his property under the provisions of subsection (a) of this section: Provided, That a petition for protest must be filed with the county commission within forty-five days after the publication of the notice required in subsection (a), section sixteen of this article. The hearing of a protest shall be governed by the same procedures described for hearings in subsection (b) of this section.

(d) Upon a showing of good cause, any person who is a taxpayer of ad valorem property taxes in any West Virginia county may be permitted to intervene in the hearing provided for in this section.

§11-1A-18. Review by circuit court on certiorari.

Within thirty days after the day the county court notifies the parties of a final determination of value made pursuant to section seventeen of this article, the owner, tax commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari instituted in accordance with the provisions of article three, chapter fifty-three of this code. For purposes
of this article, the recorded testimony of the hearing, when certified by the county commission, may be used by the circuit court as the transcript of testimony.

§11-1A-19. Subsequent statewide reappraisals required.

After the first statewide reappraisal, to be completed on or before the thirty-first day of March, one thousand nine hundred eighty-five, the commissioner shall require that periodic reviews of property valuation shall take place so as to ensure that all property is valued at market value as set forth herein at all times: Provided, That statewide reappraisals of property shall take place at least every ten years after the year one thousand nine hundred eighty-five.

§11-1A-20. Cooperation of other agencies of state and local government.

The several departments and agencies of state government, county commissions and county assessors are hereby authorized, required and directed to render such necessary aid and assistance to the tax commissioner as is required to enable the commissioner to complete the first statewide reappraisal of all property by the thirty-first day of March, one thousand nine hundred eighty-five.

§11-1A-21. Electronic data processing system network for property tax administration.

(a) The tax commissioner shall devise and cause to be established a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property, through the timely sharing of property tax information among county assessors and the tax commissioner.

(b) Each county shall lease, at its expense, the data processing equipment required by the commissioner to be located in each county. Additionally, each county shall provide, at its expense, the necessary staffing and operating personnel and all other necessary facilities, including telephone and other communications equipment, to allow on-line interaction with the host computer or such other computer as the commissioner may designate. Each county shall be charged by the commissioner for its proportionate share of the cost for use of the host computer and other
related services. Such data processing and communications
equipment must be installed and tested and county
personnel trained to use the equipment on or before the first
day of July, one thousand nine hundred eighty-five.

(c) To ensure equipment compatibility and the efficient
operation and maintenance of the statewide electronic data
processing system network, the commissioner shall select
and may, from time to time, change equipment suppliers at
the state and county level. All equipment for the system
shall be acquired under the purchasing procedures
specified in article three, chapter five-a of this code.

(d) The commissioner may promulgate reasonable rules
governing the operation of the statewide electronic data
processing system network. Such rules shall, at a minimum,
specify that each assessor shall enter all changes in the
description, status, classification and value not later than
the calendar month following the month during which the
changes took place. The rules shall provide for thorough
and adequate safeguards to prevent unauthorized access to
the system network and the data base. The commissioner
shall make available to every taxpayer, upon his request,
through the system, the description and appraised value of
each parcel valued and the method used in determining the
appraised value. The system shall be capable of providing
for the assessment of each parcel and item of property at
sixty percent of its appraised value and for the phasing-in
of the first statewide reappraisal, as to each parcel and item
of property and the phasing-in of any subsequent
reappraisal as may be authorized by the Legislature.

(e) County assessors shall convert or cause to be
converted, at county expense, any current assessment
information not in the data files of the tax commissioner for
purposes of the first statewide reappraisal and the
preparing of a system of assessments utilizing the results of
the reappraisal, to be phased-in as required in section
twenty-two of this article. Such conversion shall be
completed on or before the first day of July, one thousand
nine hundred eighty-five.

(f) The commissioner may offer to county sheriffs, as an
optional service, a uniform computerized property tax
billing and accounting system using the assessed values and taxpayer information generated through the statewide system. Each sheriff using such optional services shall be charged the proportionate cost for use of the host computer and related services and materials, which charge shall be paid by the county commission.

(g) The commissioner is hereby specifically authorized and empowered to enter into such contracts as may be necessary and for which funds may be available to establish the electronic data processing system provided for in this section.

(h) The cost of any service or act performed by the commissioner under the provisions of this section shall be paid by the county commission of the county for which the service or act was provided. The cost of any service or act shall be the actual cost and expense incurred by the commission to provide the service or act. The commissioner shall render to the county commission a statement of the costs as soon after the same were incurred as practicable. It shall be the duty of the county commission to allow the same and to cause it to be paid promptly in the manner that other claims and accounts are allowed and paid and the amount owed to the tax commissioner shall constitute a debt due the state which may be satisfied from any money owed the county commission by the state for any reason.

(i) Payments received for the cost of services or acts performed by the commissioner under this system shall be deposited in a revolving fund which shall be known as the “County Tax Fund,” hereby created in the state treasurer’s office.

(j) As used in this section, the following terms mean:

1) “System” means the statewide electronic data processing system network for administration of the ad valorem property tax on real and personal property provided for in this section.

2) “Electronic data processing” means the use of the computer for operations which include the storing, retrieving, sorting, merging, calculating and reporting data for use in preparing assessment rolls, tax lists, tax bills and other reports for use in property tax administration.
§11-1A-22. Phase-in, determination thereof, application and limitations.

1 The Legislature hereby finds that the "Property Tax Limitation and Homestead Exemption Amendment of 1982" intended to provide that the increased valuation of property, both real and personal, resulting from the first statewide reappraisal be allocated over a period of ten years in equal amounts annually.

2 The Legislature further finds and ascertains that the only fair and equitable manner to achieve the allocation of increased valuation over a period of ten years in equal amounts annually is to provide that upon determination by the first statewide reappraisal of the appraised value of each parcel of land or interest therein and each item of personal property, sixty percent of each appraised value shall be compared with its corresponding assessed value for the base year as adjusted to establish the assessed value for the year next preceding the first year of the phase-in. If sixty percent of the appraised value is larger than the previously assessed value for the year next preceding the first year of the phase-in, the difference shall be divided into ten equal parts. For the tax year one thousand nine hundred eighty-six, and for each subsequent year through the tax year one thousand nine hundred ninety-five, the assessed value for the base year shall be increased by one such tenth part. The result plus sixty percent of any subsequent annual increases in appraised value or less sixty percent of any annual decreases in appraised value shall be the assessed value for each such year: Provided, That such assessed value shall not exceed sixty percent of the market value in any year.

§11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.

1 (a) Secrecy of returns and return information.—Property tax returns and return information filed or supplied pursuant to this article and articles three, four, five and six of this chapter and information obtained by subpoena or subpoena duces tecum issued under the provisions of this article shall be confidential and except as
authorized in this section, no officer or employee of the state
tax department, county assessors, county commissions and
the board of public works shall disclose any return or return
information obtained by him, including such return
information obtained by subpoena, in any manner in
connection with his service as such an officer, member or
employee: Provided, That nothing herein shall make
confidential the itemized description of the property listed,
in order to ascertain that all property subject to assessment
has been subjected to appraisal: Provided, however, That
the commissioner and the assessors shall withhold from
public disclosure the specific description of burglar alarms
and other similar security systems held by any person,
stocks, bonds and other personal property held by a natural
person, except motor vehicles and other tangible property
utilized publicly, and shall withhold from public disclosure
information claimed by any taxpayer to constitute a trade
secret or confidential patent information: Provided further,
That such property descriptions withheld from public
disclosure shall be subject to production and inspection in
connection with any review, protest or intervention in the
appraisal or assessment process, under such reasonable
limitations as the board of review, board of equalization
and review or court shall require. The term officer or
employee includes a former officer, member or employee.

(b) Disclosure.—(1) Information made confidential by
subsection (a) of this section shall be open to inspection by
or disclosure to officers, members and employees of the
state tax department, county assessors, county
commissions and to members of the board of public works
whose official duties require such inspection or disclosures
for property tax administration purposes. Disclosure may
be made to persons, or officers or employees thereof, who
are employed by the state tax commissioner by contract or
otherwise, provided such person, or officer or employee
thereof, shall be subject to the provisions of this section as
fully as if he was an officer or employee of the state tax
department. Information made confidential by subsection
(a) of this section shall be open to inspection by the property
owner providing such information and to his duly
authorized representative.
(2) Information made confidential by subsection (a) of this section may be disclosed in a judicial or administrative proceeding to collect or ascertain the amount of tax due, but only if (i) the taxpayer is a party to the proceedings or (ii) such return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

(c) Reciprocal exchange.—The tax commissioner may permit the proper officer of the United States, or the District of Columbia, or any other state, or his authorized representative, to inspect reports, declarations or returns filed with the tax commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the tax commissioner or to the attorney general of this state.

(d) Penalties.—Any officer, member or employee of the state tax department, county assessors, county commissions and the board of public works who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(e) Limitations.—Any person protected by the provisions of this article may, in writing, waive the secrecy provision of this section for such purpose and such period as he shall therein state, and the officer with whom such waiver is filed, if he so determines, may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article.

This section shall not be construed to prohibit the publication or release of statistics so classified so as to prevent the identification of particular reports and the items thereof nor to prevent the publication and release of assessments and appraised values of property.


The tax commissioner shall develop, or cause to be developed, appraisal manuals for all species of property, for
use in making statewide reappraisals. These manuals shall be used by the tax commissioner, county assessors, county commissions, the board of public works and any property appraisal firm or firms employed to assist in making statewide reappraisals. These manuals shall, at a minimum:

(1) Provide guidelines for determining the appraised value of all species of property that are consistent with this article; (2) establish work procedures; and (3) promote uniformity of approach to tasks. The tax commissioner and his designated agents shall consult with each of the county assessors in the preparation of all such manuals.

§11-1A-25. Failure to list property, etc.; collection of penalties and forfeitures.

If any person, firm or corporation, including public service corporations whose duty it is by law to list any real estate or personal property for appraisal, shall refuse to furnish a proper list thereof or refuse to list within the time required by law and within thirty days after written demand therefor; or if any person, firm or corporation, including public service corporations, shall refuse to answer or shall answer falsely any question asked by the assessor or by the tax commissioner, or shall refuse to deliver any other statement required by law, he or it shall forfeit not less than twenty-five nor more than one hundred dollars, and shall be denied all remedy provided by law for the correction of any appraisal made by the tax commissioner. If any person, firm or corporation, including a public service corporation, required by this article to make return of property for appraisal, fails to return a true list of all property which should be appraised under the provisions of this article, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this state.

Such forfeitures shall be collected as is hereinafter provided under the provision of article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his personal representative. The sheriff shall apportion such fund among the state, county, district, school district and
municipalities which would have been entitled to the taxes
upon such property if it had been assessed, in proportion to
the rates of taxation for each such levying unit for the year
in which the judgment was obtained bears to the sum of
rates for all. Any judgment recovered under this section
shall be a lien, from the time of the service of the notice,
upon all real estate and personal property of such
defaulting taxpayer, owned at the time or subsequently
acquired, in preference to any other lien.

§11-1A-26. Appraisal of corporate property; reports to tax
commissioner by corporations.

Each incorporated company, foreign or domestic, having
its principal office or chief place of business in this state, or
owning property subject to taxation in this state, shall
include with the return required by this article, a list of the
following items: (a) The amount of capital authorized to be
employed by it; (b) the amount of cash capital paid on each
share of stock; (c) the amount of credits and investments
other than its own capital stock held by it on said date, with
their true and actual value; (d) the quantity, location and
value of all its real estate, and the tax district or districts in
which it is located; and (e) the kinds, quantity and value of
all of its tangible property in each tax district in which it is
located.

The list required by this section shall be under oath,
which oath shall be substantially as follows:

State of West Virginia, County of ............... , ss:

I, ................., president (treasurer or manager) of
(here insert name of corporation), do solemnly swear (or
affirm) that the foregoing is, to the best of my knowledge
and judgment, true in all respects; that it contains a
statement of all the real estate and personal property,
including credits and investments belonging to said
corporation; and said corporation has not, to my
knowledge, during the sixty-day period immediately prior
to the first day of the assessment year converted any of its
assets into nontaxable securities or notes or other evidence
of indebtedness for the purpose of evading the assessment
of taxes thereon; so help me God.
The officer administering such oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by .................

this the ........ day of ......................, 19................

§11-1A-27. West Virginia appraisal control and review commission created; term of existence defined; duties of commission; tax commissioner to provide services, staff and equipment; nomination and appointment of members; removal of members and filling of vacancies; compensation and expenses; composition of subcommittees of commission; appraisement manual review subcommittee; computer technology review subcommittee; compensation of subcommittees; issuance of cease and desist orders by commission; authority of governor to rescind or modify cease and desist orders; meetings of commission; quorum; taxpayer complaint and the treatment and disposition thereof.

(a) There is hereby created in the executive department of the state government, within the state tax department, the West Virginia appraisal control and review commission, an independent agency, consisting of seventeen persons, to be selected as provided in this section. The commission shall continue until the values fixed by the first statewide reappraisal shall be first utilized for the determination of assessed value but in no event beyond the first day of July, one thousand nine hundred eighty-seven.

(b) It shall be the duty of the commission to determine that the mass appraisal of residential real property is at all times proceeding in accord with the provisions of this article and that no practice or procedure employed in the first statewide reappraisal of property pursuant to this article is employed contrary to law or contrary to the provisions of any regulation or contract consistent with the provisions of this article or other applicable general law. Contractors, the various assessors and their employees and all employees of the state tax commissioner shall appear before the commission upon request and otherwise
21 cooperate with the commission in any inquiries the 
22 commission or its subcommittees shall conduct. 

23 (c) It shall also be the duty of the commission (1) To 
24 publish information to advise the public of the nature and 
25 extent of the reappraisal and their rights to specific 
26 advice and information from the commission; (2) to receive, 
27 investigate, hear and consider complaints by citizens and 
28 officers of corporations whose property is subject to return 
29 or reappraisal under this article, except complaints 
30 disposed of to the satisfaction of the complainants by the 
31 assessors of the various counties or informally by the 
32 commission, concerning any practice, procedure or activity 
33 of the persons or firms conducting any part of the property 
34 reappraisal which is or is claimed to be contrary to law, or 
35 regulations or contracts entered into pursuant to this 
36 article; and (3) to prepare and provide for dissemination to 
37 all taxpayers a "Property Owner's Bill of Rights" pamphlet 
38 explaining in concise language the reappraisal program 
39 required by the constitution and this article and the rights 
40 of property owners to formal and informal review of 
41 practices and procedures and the fixing of appraised values 
42 of their property and such other rights, duties and 
43 privileges as arise under this article and the Tax Limitation 
44 and Homestead Exemption Amendment of 1982 and such 
45 other matters as the commission shall direct. 

46 (d) For the purposes of carrying out its duties under this 
47 article, the commission shall be furnished by the tax 
48 commissioner with office space, clerical and other staff 
49 assistance, and equipment, including statewide inward and 
50 outward WATS line telephone service, to be known as the 
51 "Property Reappraisal Hotline," and reasonable efforts 
52 shall be made in the conduct of the first statewide 
53 reapraisals to advise the public generally and each person 
54 whose residential real property is being reappraised of the 
55 availability of such "Property Reappraisal Hotline" and 
56 information and advice concerning such reappraisal.

57 (e) The tax commissioner shall be the chairman of the 
58 commission and have the right to vote and preside over the 
59 commission and direct its staff to carry out commission 
60 directives. The remaining sixteen members shall be drawn 
61 from each of the state's four congressional districts as
comprised on the effective date of this section. Four persons, all of whom shall be residents of the congressional district for which they are selected, but none of whom shall be residents of the same county, shall be appointed by the governor, with the advice and consent of the Senate. Not more than two persons who are members of the same political party shall be appointed from any congressional district. All persons appointed by the governor shall be residents of the state and of the congressional district for which they are appointed and shall be owners of real property or an interest therein. Within five days after the effective date of this section each county commission shall nominate residents of its county for appointment to the commission and shall commence publication of a Class II-0 legal notice, in a newspaper of general circulation in the county, advertising its intention to nominate persons for appointment to the commission and fixing a date not more than ten days after the first publication of such notice as the last day for citizens of the county to suggest the names of possible nominees to the county commission. Any such suggestions may be made in writing or orally to any such county commission. Within seven days after the second publication, any such county commission shall, by order, nominate four persons who are residents of such county and who possess the requisite qualifications, not more than two of whom are members of the same political party, and forthwith transmit a certified copy of such order to the governor. From the list of nominees supplied by the various county commissions, the governor shall appoint the requisite number of persons to the commission within sixty days of the effective date of this section. A person appointed shall serve until the commission terminates unless such person sooner resigns, dies or is removed. A person may be removed only by the governor for good cause in the manner that other officers subject to removal by the governor may be removed: Provided, That any member who fails to attend three consecutive regular meetings may be removed by the governor. Any vacancy shall be filled within thirty days of the vacancy by the governor, by appointment of a person nominated by one of the county commissions who has the requisite qualifications: Provided, That the governor may request additional nominations from county commissions
of counties whose residents are eligible for appointment or
appoint any eligible person. Any person appointed to fill a
vacancy shall be made with the advice and consent of the
Senate, and shall serve until the commission is terminated
or such person sooner dies, resigns or is removed.

(f) No person holding paid public office shall be eligible
for appointment to the commission. Members, except the
chairman, shall be paid a per diem of thirty-five dollars for
each day of actual service on the commission or a
subcommittee thereof but may waive such payment.
Members shall be reimbursed reasonable expenses
pursuant to regulations for the payment thereof to state
government employees. All compensation and expenses of
the commission shall be paid from appropriations to the
state tax commissioner for the statewide reappraisal.

(g) The commission may divide the state into four areas,
each area consisting of one of the congressional districts
fixed by law. The membership of the commission from each
such area shall constitute the membership of a
subcommittee for such area. The tax commissioner shall
designate an employee of his office assigned to oversee the
reappraisal in one or more of the counties within such
area as the chairman of the subcommittee for such area,
who shall be empowered to act for and on behalf of such
subcommittee in the same manner as the tax commissioner
shall act for the commission.

Any such area subcommittee may, subject to the rules of
the commission, review the conduct of the reappraisal in
such area and any complaints originating in the area and
perform such other duties on behalf of the commission as
are consistent with this article and as are consistent with
the duties of the commission and make such
recommendations to the commission as it may deem
appropriate.

(h) In addition to the area subcommittees the
commission shall appoint a subcommittee of six county
assessors to review the various appraisal manuals
proposed to be employed in the reappraisal. Within the
time frame to be specified by the tax commissioner for his
review of such appraisal manuals, the subcommittee shall
review and comment on such manuals, such comments to be
delivered to the tax commissioner on the date scheduled by
him which date shall not be sooner than forty-five nor more
than sixty days after delivery of such manuals to the
subcommittee. No more than two of the members shall be
assessors of counties in any one congressional district.

(i) In addition to the area subcommittees the
commission shall appoint a subcommittee of four persons
recognized by the commission to be experts in computer
technology, no two of whom shall be residents of the same
congressional district. Within a time frame to be specified
by the tax commissioner for his review of computer
programs, equipment proposals or other computer plans,
the subcommittee shall review and comment on such
computer programs, equipment proposals and other
computer plans as may be submitted to the tax
commissioner for his review and approval, such comments
to be delivered to the tax commissioner on the date
scheduled by him which date shall not be sooner than
forty-five nor more than sixty days after commencement of
any such review by the subcommittee.

(j) The tax commissioner shall serve as chairman of the
subcommittee on manuals and the subcommittee on
computer technology, have a vote thereon, and be excluded
from consideration in determining if any member meets
residency requirements. The commission shall fix the
compensation of members of the committee on computer
technology other than the chairman. Members of the
subcommittee on manuals and computer technology shall
also be reimbursed for reasonable expenses according to
travel regulations of the executive department.

(k) On the recommendation of any subcommittee or
upon the initiative of the commission, the commission may
after hearing and on a majority vote of those present, issue a
cease and desist order with respect to any practice,
procedure or activity in the reappraisalment which it finds
to be contrary to law, this article or any regulation or
contract consistent with this article. Such order shall be
effective upon its adoption: Provided, That within ten days
after the adoption of such order, the governor may by
executive order rescind or modify the cease and desist
order. Any such cease and desist order modified by executive order of the governor shall from the issuance of the executive order be effective only as so modified. No such cease and desist order by the commission or any executive order shall deprive the state of a uniform and equal reappraisal consistent with the provisions of this article. No order of the commission or executive order of the governor shall be stayed in any action except upon application to the supreme court of appeals for relief pursuant to its original jurisdiction.

(l) The commission shall meet on the third Wednesday of each month during its term. Any subcommittee shall meet at least monthly during its continuance. A quorum shall consist of one half the membership of the commission or subcommittee computed without regard to the chairman, or his presence or absence. A special meeting of the commission or any subcommittee shall be held on the call of the chairman, provided such call of a special meeting shall be communicated by mail or telephonic communication to the residence of all members of the commission or subcommittee at least twenty-four hours before the date of the meeting.

(m) No member of the commission or any subcommittee shall be required to attend court on the day of, the day before or the day after any meeting of the commission or of such subcommittee which such member actually attends.

(n)(1) Any taxpayer aggrieved by any procedure, practice, activity or conduct incident to any statewide reappraisal carried out under the provisions of this article shall, in the first instance, lodge a complaint with the assessor of the county wherein such taxpayer has property situate. Any such complaint may be communicated orally or in writing by the taxpayer to the assessor. It shall be the duty of the assessor to receive the complaint, and, unless he resolves the complaint informally to the satisfaction of the taxpayer within five days of its receipt, the assessor shall prepare a report upon a form provided for that purpose by the tax commissioner, setting forth a fair summary of the complaint. In attempting to informally resolve the complaint, the assessor is expressly authorized to contact the officers and employees of the state tax department and
its designated agents to discuss possible solutions to the complaint.

(2) If the complaint is in the nature of alleged nonconformity to the provisions of this article or other provisions of law relating to the appraisal of property for ad valorem property taxation, regulations promulgated thereunder, or the provisions of an agreement between the tax commissioner and a designated agent, the complaint form prepared by the assessor shall forthwith be transmitted by the assessor to the West Virginia appraisal control and review commission, which shall acknowledge receipt thereof in writing mailed to the taxpayer. Upon request by the taxpayer, he shall be heard at the meeting during which the complaint is considered, and the commission shall afford such other hearing, conduct any appropriate investigation, and dispose of the complaint in such manner as may be provided by law and any rules of procedure adopted.

(3) If the complaint is in the nature of alleged misconduct relating to the demeanor of any person charged with responsibility for performing any function required by this article, the complaint form prepared by the assessor shall forthwith be transmitted by the assessor to the tax commissioner, who shall acknowledge receipt thereof in writing mailed to the taxpayer. The tax commissioner shall conduct any appropriate investigation, and dispose of the complaint in such manner as may be provided by law and any rules of procedure adopted.

(4) In all cases where disposition is made of a complaint under this subsection, notice of the disposition shall be given to the taxpayer and the assessor.

§11-1A-28. Review appraisal requirements; qualifications of review appraisers with respect to residential property; review appraisers to be competent witnesses.

In the conduct of mass appraisal of residential real property the tax commissioner shall assure that the person who evaluates the collected data with respect to any parcel of real property subject to such appraisal and visits the property for the purpose of reviewing such data, actual
6 conditions, and estimated value is in the first instance, with
7 respect to residential property containing eight or fewer
dwelling units, a bona fide resident of West Virginia for at
9 least one year prior to employment in such capacity and is a
10 person familiar with the area in which such property is
11 located, including the amenities of the area and general
12 trend of market values over the period during which the
13 trend is required by law to be considered. Such person shall,
14 if qualified under this section, be a competent witness in all
15 proceedings relating to the appraisal of such property,
16 notwithstanding any further review or refinement of the
17 data or other consideration in such appraisement.

§11-1A-29. Requirements for state employees and employees
of designated agents; legislative findings; modification of existing contract for mass
appraisal; exemption of certain appraisal employees of tax commissioner from civil
service.

1 Of the whole number of persons engaged in the
2 reappraisal process, ninety-five percent of all persons
3 employed by the state and its designated agents in this state
4 to conduct any part of the reappraisal shall be residents of
5 the state. The Legislature finds that the process of
6 reappraisal, the acceptance of the results by the public,
7 and the deeply held attitudes and outlook of the citizens of
8 the state require, for the success of the reappraisal and
9 the acceptance of the widespread resulting adjustments in
10 assessment values, that this stringent requirement be
11 strictly adhered to, to the end that school revenues and
12 other local income and taxation have the benefit of the
13 reappraisal as promptly as possible.

14 On the effective date of this section, the contract of the
15 state for mass appraisal of residential properties and other
16 reappraisal services shall be modified as follows:
17 (1) To conform with this article; and
18 (2) To remove from the contract data encoders and other
19 clerical help, at an aggregate reduction in cost under the
20 contract of at least three million dollars.
21 After investigation, the Legislature finds that the
22 contractor is amenable to the modification of its contract to
conform with the requirements of this article. The tax
commissioner is directed to conform such contract to the
requirements of this article within ten days after the
effective date of this section.

The data encoders and other clerical employee positions
required to be transferred from the contract to state
employment pursuant to this section, being temporary
positions requiring prompt employment of limited duration,
are hereby classified exempt for the purposes of article six,
chapter twenty-nine of this code. The tax commissioner is
hereby granted plenary authority, subject only to the
supervision of the governor, to determine all terms and
conditions of employment of such employees.

§11-1A-30. Severability.

1 The provisions of subsection (cc), section ten, article two,
chapter two of this code regarding severability shall be
deemed to be included herein as if set forth in extenso in this
section.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2. Canvass by assessor; lists of property.

§11-3-2. Canvass by assessor; lists of property.
§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.
§11-3-31. Generally applied, and usual and customary practices and procedures utilized
by assessors prior to the second day of July, one thousand nine hundred
eighty-two; limit of liability.

1 On the first day of July, in each year, the assessors and
their deputies shall begin the work of assessment in their
respective counties, and shall, from that date, diligently and
continuously pursue with all reasonable dispatch, their work
of assessment until the same is completed: Provided, That
the assessor and his deputies shall finish their work of
assessment, and complete the land and personal property
books not later than the thirtieth day of January. Beginning
on the first day of July, as aforesaid, the assessor or a deputy
shall obtain from every person in the county who is liable to
assessment, a full and correct description of all of the
personal property of which he was the owner on the first
day of July of the current year, fixing what he deems to be
the true and actual value of each item of personal property
for the guidance of the assessor, who shall finally settle and
determine the actual value of each item of such property by
the rule prescribed in section one of this article. The
assessor or a deputy shall also obtain from such person
separate, full and true statements, in like manner, and upon
forms to be furnished him, distinctly setting forth in each a
correct description of all property, real and personal, held,
possessed or controlled by him as executor, administrator,
guardian, trustee, receiver, agent, partner, attorney,
president or accounting officer of a corporation, consignee,
broker, or in any representative or fiduciary character; and
he shall fix what he deems the true and actual value thereof
to each item of such property, which valuation shall be
subject to revision and change by the assessor in like
manner as property owned by such person in his own right:
Provided, That no person shall be compelled to furnish the
list mentioned in this section sooner than the tenth day of
July of the current year.

The assessor shall perform such other duties while
making his assessment as may be required of him by law.

§11-3-10. Failure to list property, etc.; collection of penalties
and forfeitures.

If any person, firm or corporation, including public
service corporations, whose duty it is by law to list any real
estate or personal property for taxation, shall refuse to
furnish a proper list thereof or refuse to list within the time
required by law, or if any person, firm or corporation,
including public service corporations, shall refuse to
answer or shall answer falsely any question asked by the
assessor or by the tax commissioner, or shall fail or refuse to
deliver any statement required by law, he or it shall forfeit
not less than twenty-five nor more than one hundred
dollars, and shall be denied all remedy provided by law for
the correction of any assessment made by the assessor or by
the board of public works. If any person, firm or
corporation, including public service corporations,
required by law to make return of property for taxation,
whether such return is to be made to the assessor, the board
of public works, or any other assessing officer or body, fails
to return a true list of all property which should be assessed
in this state, including notes, bonds, bills and accounts
receivable, stocks, and any other intangible personal property, such person, firm or corporation, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this state. A forfeiture as to all property aforesaid may be enforced for any such default occurring in any year not exceeding five years immediately prior to the time the same is discovered, but no liability to penalty or forfeiture as to notes, bonds, bills and accounts receivable, stocks and other intangible personal property arising prior to the first day of January, one thousand nine hundred thirty-three, shall be enforceable on behalf of the state or of any of its subdivisions. Each failure to make a true return as herein required shall constitute a separate offense, and a forfeiture shall apply to each of them, but all such forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against such person, firm or corporation, or against the estate of any deceased person and shall not exceed five percent of the value of the property not returned. Such forfeitures shall be collected as is hereinafter provided under the provision of article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his personal representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon such property if it had been assessed, in proportion to the rates of taxation for each such levying unit for the year in which the judgment was obtained bears to the sum of rates for all. When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of such deceased person next preceding the appraisal of his estate, it shall be prima facie evidence that such deceased person returned an imperfect list of his property: Provided, That any person liable for the tax or his personal representative, may always be permitted to prove by competent evidence that the discrepancy between such assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated
in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation. Any judgment recovered under this section shall be a lien, from the time of the service of the notice, upon all real estate and personal property of such defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

§11-3-31. Generally applied, and usual and customary practices and procedures utilized by assessors prior to the second day of July, one thousand nine hundred eighty-two; limit of liability.

To the extent that any generally applied, usual and customary practice or procedure utilized by the assessors of the several counties prior to the second day of July, one thousand nine hundred eighty-two, for the return, listing, appraisement and assessment of property for ad valorem property taxation did not violate the then existing statutory law, interpretations thereof by the courts or the state tax commissioner, or regulations promulgated under such statutory law, and to that extent only, the use of such practice or procedure, in good faith, shall not be the sole basis for, or be considered in, the removal of any public officer or the imposition of any civil liability upon such official. The state tax commissioner shall be competent to offer testimony as to whether the practice or procedure utilized was generally applied, was a usual and customary practice among the several counties, and may offer testimony regarding formal or informal interpretations, rules or practice employed by him and his predecessors in office at the time such alleged usual and customary practice or procedures were utilized in several counties.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

§11-6B-7. Property tax books.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

(a) General.—An exemption from ad valorem property taxes shall be allowed for the first twenty 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 twenty
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-7. Property tax books.

(a) Property book entry.—The exemption of the first
twenty thousand dollars of assessed value shall be shown on
the property books as a deduction from the total assessed
value of the homestead.

(b) Levy; statement to homestead owner.—When the
twenty 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.

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL
PROPERTY.

§11-22-6. Duties of clerk; declaration of consideration or
value; filing of sales listing form for tax
commissioner; disposition and use of proceeds.

When any instrument on which the tax as herein provided
is imposed is offered for recordation, the clerk of the county
commission shall ascertain and compute the amount of the
tax due thereon and shall ascertain if stamps in the proper
amount are attached thereto as a prerequisite to acceptance
of the instrument for recordation.

When offered for recording, each instrument subject to
the tax as herein provided shall have appended on the face
or at the end thereof, a statement or declaration signed by
the grantor, grantee or other responsible party familiar
with the transaction therein involved declaring the
consideration paid for or the value of the property thereby
conveyed. Such declaration may be in the following
language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property
conveyed by the document to which this declaration
is appended is $......................; or

(b) The true and actual value of the property transferred
by the document to which this declaration is appended is,
to the best of my knowledge and belief
$......................; or

(c) The proportion of all the property included in the
document to which this declaration is appended which is
real property located in West Virginia is .......%; the value
of all the property$......................; the value of real
estate in West Virginia is $......................; or

(d) This deed conveys real estate located in more than
one county in West Virginia; the total consideration paid
for, or actual cash value of, all the real estate located
in West Virginia conveyed by this document is
$......................; and documentary stamps showing
payment of all the excise tax on all of said real estate are
attached to an executed counterpart of this deed recorded
in ................... County.

Given under my hand this ..................... day of
.............................................., 19.....
Signed ..............................................
(Indicate whether grantor, grantee,
or other interest in conveyance).
..............................................
Address"

Such declaration shall be considered by the clerk in
ascertaining the correct number of stamps required, and if
declaration (d) is used no stamps shall be required on the
duplicate deed to which it is attached and such duplicate
deed shall be admitted to record, and when recorded shall
have the same effect for all purposes as if stamps were attached thereto.

On or after the first day of July, one thousand nine hundred eighty-three, the clerk shall not record any document with stamps affixed unless there is tendered with the document a completed and verified sales listing form for the benefit and use of the state tax commissioner. Preprinted forms for this purpose shall be provided each clerk by the tax commissioner.

The forms shall require the following information: (1) If the last deed in the chain of title represents the last transfer of the property, the names of the grantor and grantee and the deed book and page number; or (2) if the last transfer was not made by deed, the source of the grantor's title, if known; or (3) if the source of the grantor's title is unknown, a description of the property and the name of the person to whom real property taxes are assessed as set forth in the land book prepared by the assessor. In all cases the forms shall require the tax map and parcel number of the property, the district or municipality in which the real property or the greater portion thereof lies, the address of the property, the consideration or value in money, including any other valuable goods or services, upon which the buyer and seller agree to consummate the sale, and any other financing arrangements affecting value. The sales listing form required by this paragraph is to be completed in addition to, and not in lieu of, the declaration required by this section: Provided, That the tax commissioner may design and provide a form which combines into one form the contents of the declaration and the sales listing form required herein and recodation and filing of that form may be used as an alternative to filing the sales listing form required herein: Provided, however, That the filing with the clerk of a duplicate deed containing the sales listing form information required by this section shall also satisfy the requirements of this section regarding the sales listing form. The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the county excise tax into the county general fund for use of the county.

On or before the tenth day of each month the clerk shall deliver to the tax commissioner, or a person designated by
AN ACT to amend chapter twenty-one-a 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 an emergency employment supplemental matching program; declaring legislative findings and public purpose; defining certain terms; providing for administration by the commissioner of the department of employment security; providing for funding as made available by legislative appropriation; providing for applications to be furnished eligible unemployed persons and private business prospective employers, and notice to both to be given statewide; providing for matching reimbursement payments to employers, calculation, duration, limits and maximums thereof; and providing for promulgation of permissive and required regulations by commissioner.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one-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 two-a, to read as follows:

ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCHING PROGRAM.

§21A-2A-1. Legislative declaration of finding and purpose.
§21A-2A-3. Application for employment by eligible unemployed person; forms and notice.
§21A-2A-4. Notice to private business employers; applications for prospective employers.
§21A-2A-1. Legislative declaration of finding and purpose.
1 The Legislature hereby finds and declares that, due to
2 adverse economic conditions existing in the state,
3 substantial unemployment of the residents of the state has
4 resulted and continues, all to the detriment of its people, its
5 business and industry and of the health, safety and welfare
6 of the state as a whole.
7 The Legislature further finds and declares that the
8 stimulation and encouragement of, and the providing of
9 incentive and inducement for, employment by private
10 business in the private sector is of greater long-term benefit
11 to the state than is public, make-work employment; that it
12 constitutes a wiser expenditure of public moneys, aids in
13 the economic recovery of our private business and industry,
14 the employment of our people, the generation of state
15 revenues, and the advancement of the health, safety and
16 welfare of the state as a whole; and thus constitutes a public
17 purpose.

1 For the purposes of this article the following terms shall
2 have the following meanings, unless the context in which
3 they are used clearly indicates otherwise:
4 (1) “Commissioner” means the commissioner of the
5 department of employment security.
6 (2) “Private business” means any nongovernmental
7 business or industry in the private sector which maintains
8 an active, bona fide place of business in this state, is duly
9 qualified to do business in the state, and is in good standing
10 under the laws of this state.
11 (3) “Eligible unemployed person” means any person
12 who is a bona fide resident of this state who has been
13 eligible for unemployment compensation benefits and has
14 received all the benefits available to him or her, and who is
15 not gainfully employed.
16 (4) “Head of household” means any person who: (1)
17 Claims one or more persons, other than the filing taxpayer,
18 as a dependent on his or her federal income tax return; (2)
19 has living in the same household one or more dependents;
20 and (3) receives no income for the household and does not
have a spouse or dependent living in the same household who is employed in regular full-time employment: Provided, That participation in any public assistance program or receipt of public assistance benefits shall not disqualify any person from entitlement to head of household status.

§21A-2A-3. Application for employment by eligible unemployed person; forms and notice.

Any person who is an eligible unemployed person as defined in section two of this article may apply for employment in the emergency employment supplemental matching program by making application with the commissioner on forms made available by the commissioner at each local job service office: Provided, That nothing contained in this section shall be construed to permit funds under this program to be used to interfere or hinder existing employment or employment agreements including, but not limited to, collective bargaining agreements. Funds may not be used in instances where work stoppages resulting from labor management disputes are in effect.

The form furnished by the commissioner shall provide for listing the eligible unemployed person's prior work experience, skills, educational history, and such other information as the commissioner deems necessary for the purposes of this article. Priority for employment under this program shall be given to eligible unemployed persons who are heads of households.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall cause to be published a statewide notice of the availability of such application forms under the emergency employment supplemental matching program.

§21A-2A-4. Notice to private business employers; applications for prospective employers.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall publish statewide a notice to private business employers of the opportunity to
employ eligible unemployed persons as provided for under this article.

Any private business, as defined in section two of this article, seeking to employ eligible unemployed persons may make application at any local job service office on forms to be supplied by the commissioner. Such forms shall provide space for a listing of the nature of the employment position available and the minimum experience, skills and educational requirements therefor. The form shall also provide space for an affidavit by the employer that the employment position to be filled is not being used in lieu of the recall of laid off workers, to replace existing employees or to supplement the compensation paid existing employees. This affidavit shall also contain a statement by the private business employer that there is a reasonable expectation that this employment may continue beyond the end of the six-month reimbursement period provided for under this article. At each job service office of the department of employment security, the commissioner shall cause to be compiled a list of job openings under this program. The list shall be available for inspection by any eligible unemployed person applying for employment hereunder. The commissioner is authorized to require, prior to approval of an application by an employer, examination of such records and documents of the employer as the commissioner may deem necessary to ensure the correctness and truthfulness of the employer's affidavit.


The commissioner shall reimburse private business employers of eligible unemployed persons from funds appropriated and made available by the Legislature to the commissioner. Such reimbursement shall equal one half of the employer's prevailing starting hourly wage for each person employed under the provisions of this article, but the state's share of the total reimbursement shall not exceed the federal hourly minimum wage. The workweek shall not exceed forty hours per week, per eligible employee, nor shall any reimbursement extend for a period longer than six months. In addition to the compensation provided under the emergency employment supplemental matching
program to the employee, each private business employer shall pay an additional sum to each such employee of not less than one half the employer's prevailing starting hourly wage plus applicable costs for each such employee of payments for workers' compensation and employer social security requirements. Any employment and reimbursement provided for in this section shall be agreed to in writing by the employer, the prospective employee and the commissioner prior to such employee's actual employment.

The commissioner shall provide by rule and regulation: The total number of employees who may be employed by any single private business employer under this program, the total number of employees who may be employed under the entire program and the priority preference to be given eligible unemployed persons who are heads of households.

The commissioner may promulgate such rules and regulations, not inconsistent with the provisions of this article, as may be deemed necessary by him to provide for proper administration of this article.

Any funds appropriated for this program which have not been committed for private sector employment purposes within a reasonable period of time determined by the commissioner to be necessary for implementation of this article shall be redistributed for public employment purposes: Provided, That this is consistent with the language of the legislative appropriation making the funds available.

CHAPTER 17

(Com. Sub. for H. B. 106—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to temporarily increasing and expanding the preference for resident vendors of
this state doing business with the state, its political subdivisions, including county boards of education; providing for the exclusion of business and occupation taxes in certain cases to determine the lowest bid; defining resident vendor; requiring a percentage of nonmanagement employees on certain public improvement projects to be state residents; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-44. Preference for resident vendors; preference for state residents for nonmanagement employment in public improvement projects; exceptions.

Other provisions of this article notwithstanding, in any instance that a purchase of commodities or printing by the director or by a state department is required under the provisions of this article to be made upon competitive bids, such purchase shall be made from a vendor resident in West Virginia, if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than two percent of the latter bid, and if such resident vendor has made written claim for such preference at the time the bid was submitted:

Provided, That from the effective date of this section, through the thirty-first day of December, one thousand nine hundred eighty-four, such preferences for a resident vendor shall be no more than five percent above the lowest qualified bid from a nonresident bidder: Provided, however, That such temporarily increased preferences shall apply to vendors doing business with the commissioner of highways including contracts awarded pursuant to the provisions of article four, chapter seventeen of this code only where the purchase is made exclusively from state funds: Provided further, That political subdivisions of the state including county boards of education may grant the same preferences to any resident vendor of this state who has made a written claim for such preference at the time a bid is submitted, but for the purposes of this proviso, in determining the lowest bid, any political
subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within such subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only such business and occupation taxes as will be paid to such municipality: And provided further, That prior to soliciting any such competitive bids, any such political subdivision may, by majority vote of all its members in a public meeting where all such votes shall be recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided herein.

A vendor shall be deemed to be a resident of this state if such vendor is an individual, partnership, association or corporation in good standing under the laws of the state of West Virginia who (1) is a resident of the state or a foreign corporation authorized to transact business in the state; (2) maintains an office in the state; (3) has paid personal property taxes pursuant to article five, chapter eleven of this code on equipment used in the regular course of supplying services of the general type offered; and (4) has paid business and occupation taxes pursuant to article thirteen, chapter eleven of this code. In addition, in the case of a vendor selling tangible personal property, a resident vendor is one who has a stock of materials held in West Virginia for sale in the ordinary course of business, which stock is of the general type offered, and which is reasonably sufficient in quantity to meet the ordinary requirements of customers.

From the effective date of this section, through the thirty-first day of December, one thousand nine hundred eighty-four, whenever a contract is awarded pursuant to a bid on the construction of a public improvement, the contract executed between the public authority and the successful bidder shall contain a provision setting forth that more than fifty percent of the nonmanagement personnel employed by the successful bidder and by each of his subcontractors for work performed on the project within the state shall be residents of the state of West Virginia who resided in the state on the date the contract
bids are opened: *Provided,* That for purposes of this paragraph
the terms “construction,” “public improvement” and “public
authority” shall be defined in accordance with definitions set
forth for those terms under the provisions of section one,
article five-a, chapter twenty-one of this code: *Provided, how-
ever,* That such provision shall be included in contracts be-
tween the commissioner of highways and a successful bidder,
including any such contracts awarded pursuant to the pro-
visions of article four, chapter seventeen of this code, only
when the contract amount is to be paid exclusively from state
funds.

If any of the requirements or provisions set forth in this
section jeopardize the receipt of federal funds, then such
requirements or provisions shall be void and of no force and
effect for that specific public improvement project.

If any provision or clause of this section or application
thereof to any person or circumstance is held invalid, such
invalidity shall not affect other provisions or applications of
this section which can be given effect without the invalid
provision or application, and to this end the provisions of
this section are declared to be severable.

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CHAPTER 18

(Com. Sub. for H. B. 107—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 24, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-three of the code of
West Virginia, one thousand nine hundred thirty-one, as amend-
ed, by adding thereto a new section, designated section five-b,
relating to liability of employers in default of payment to the
workers’ compensation fund; setting forth the legislative pur-
pose; describing when employers in default for purposes of
this section; providing for the application of settlement; estab-
lishing when employer is reinstated; the effect of reinstatement;
setting forth the amount of settlement; limitation of time for
settlement; authorizing the commissioner to agree on payment
schedule; limitation on period for payment; when employer in default of settlement payment; effect of default of settlement payment; setting forth notice requirements of commissioner; and requiring commissioner to provide application forms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRA TERRITORIAL COVERAGE.

§23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.

The Legislature hereby declares that it is the purpose of this section to provide any employer who may, as of the effective date of this section, be in default in any payment due under the provisions of this chapter, an opportunity to settle the amount of the default in accordance with the provisions hereinafter set forth. For purposes of this section, the term “default” shall apply to any employer who has failed to subscribe or pay premiums to the workers’ compensation fund in accordance with the provisions of this chapter.

(a) On or before the first day of October, one thousand ninety-three, any employer who may qualify under this section shall apply to the commissioner for a settlement of the amount of default. Such application shall: (1) Be made on a form prescribed by the commissioner; (2) include the gross payroll of the employer during the entire period of default, which payroll information shall be verified by the employer or its authorized agent; and (3) include a payment equal to one half of one percent of the gross payroll during the period of default, or one hundred dollars, whichever amount shall be greater.

(b) Notwithstanding other provisions of this chapter to the contrary, upon timely receipt of the application prescribed in subsection (a) of this section, the commissioner shall declare
the employer to be reinstated to the benefits and protections
of this chapter: Provided, That such reinstatement shall not
affect any cause of action which has accrued against the em-
ployer as a result of an injury sustained during any period of
default: Provided, however, That the employer shall make the
quarterly premium payments as prescribed by this chapter, be-
ginning with the premium due for the third quarter of the year
one thousand nine hundred eighty-three, and continuing there-
after as the same shall become due.

(c) After the commissioner shall have received the appli-
cation of an employer as prescribed herein, the commissioner
and the employer or its authorized agent shall agree, in writ-
ing, on or before the first day of July, one thousand nine hun-
dred eighty-four, to settle the default in an amount which shall
include all delinquent premium payments, plus interest, com-
pounded monthly, at the rate that would have been earned on
the premiums had they been timely paid. The commissioner
may authorize payment of the amount set forth in the agree-
ment on a payment schedule, which period shall not exceed
three years from the date of the execution of the agreement.
The agreement shall set forth that the employer shall be in
default if any payment shall not be received by the commis-
sioner within fifteen days of the due date thereof.

(d) If the employer shall fail to pay current premiums in
accordance with the provisions of this chapter or if the em-
ployer shall default upon any payment set forth under the
terms of the agreement, such agreement shall be null, void
and of no effect and the commissioner shall have the authority
to proceed in accordance with the provisions of this chapter.

(e) The commissioner shall notify in writing, within fifteen
days of the effective date of this section, all employers who are
in default as indicated by the records of the commissioner of
the employer's right to apply for a settlement in accordance
with the provisions of this section. The commissioner may also
take additional steps, as deemed appropriate, to notify other
employers of the rights set forth herein. The written notice of
the commissioner shall include the form required for applica-
tion and the commissioner shall make such form available to
other employers.
RESOLUTIONS
(Only resolutions of general interest are included herein)

SENATE CONCURRENT RESOLUTION NO. 3
(By Mr. Tonkovich, et al)
[Adopted May 24, 1983]

Urging the Congress of the United States to enact a new jobs program which will help create permanent and productive jobs in West Virginia.

WHEREAS, West Virginia, even under normal allocation procedures, received less than its fair share of the present Federal Jobs Bill; and

WHEREAS, West Virginia for several months now has been experiencing the highest unemployment rate of any state in the nation; and

WHEREAS, The Congress has targeted nearly 2.4 billion dollars of the total 4.6 billion dollars in the jobs bill for specific projects in states other than West Virginia; and

WHEREAS, No such specific projects were targeted for West Virginia despite the fact that West Virginia has the highest unemployment rate in the nation; and

WHEREAS, The Federal Jobs Program funds that are coming to the State of West Virginia are mandated to expand or enhance existing programs rather than have as their primary purpose the creation of new jobs; and

WHEREAS, West Virginia lost more federal aid than any other state last year; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is hereby urged in its consideration of the second phase of federal jobs program legislation to enact, and the President is urged to promote and approve a new jobs program bill which will target funds for the creation of permanent, productive jobs in West Virginia and other states which did not receive their fair share
of the jobs program funds provided for in the first jobs program bill passed by Congress; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to send a copy of this resolution to the President of the United States, to the President of the United States Senate, to the Speaker of the House of Representatives and to each member of the West Virginia Congressional delegation.

SENATE CONCURRENT RESOLUTION NO. 5
(By Mr. Tonkovich)

[Adopted June 2, 1983]

Providing for an adjournment of the Legislature until the 17th day of August, 1983, at 12:00 Noon, and for reconvening prior thereto by the Committees on Rules of the Senate and of the House of Delegates.

Resolved by the Legislature of West Virginia:

That when adjournment is taken by the two Houses of the Legislature at the close of their respective sessions on the 2nd day of June, 1983, said adjournment shall be until Wednesday, August 17, 1983, at 12 Noon, pursuant to Article VI, Section 23 of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the Committee on Rules of the Senate and by a majority vote of the Committee on Rules of the House of Delegates, in which event such adjournment shall be until the date and time of reconvening specified by said committees; and that the Legislature hereby expressly authorizes said Committee on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this session prior to the 17th day of August, 1983, as herein provided.

SENATE CONCURRENT RESOLUTION NO. 6
(By Mr. Boettner)

[Adopted August 17, 1983]

Declaring the intent of the Legislature relating to Committee Substitute for House Bill No. 104 enacted May 31, 1983 and
RESOLUTIONS

its application to certain state employees; directing state agency employers to apply Committee Substitute for House Bill No. 104 enacted May 31, 1983, prospectively only; and directing the Joint Committee on Government and Finance to study the issue of whether state employees included in the classified service should be prospectively permitted to hold certain paid public offices; i.e., members of local school boards and local municipal councils or other paid public offices while at the same time being a classified employee.

WHEREAS, The Legislature enacted in the first extraordinary special session on May 31, 1983, Committee Substitute for House Bill No. 104 relating to civil service coverage for certain state employees; and

WHEREAS, In part, this legislation prohibits certain state employees included in the classified service from concurrently holding any paid public office while being a classified state employee; and

WHEREAS, The Legislature was not aware that the West Virginia State Civil Service Commission by prior regulation had authorized state classified employees to hold certain nonpartisan public offices including members of local school boards and nonpartisan membership on municipal councils and that there were certain state classified employees holding such offices at the time of the effective date of Committee Substitute for House Bill No. 104; and

WHEREAS, The above aforementioned Committee Substitute for House Bill No. 104 was made effective from passage and has been interpreted as having an immediate effect on state classified employees now holding any paid public office heretofore authorized by the West Virginia State Civil Service Commission which may require their resignation from public office or termination of employment by the State; and

WHEREAS, Such interpretation is contrary to the intent of the Legislature; and

WHEREAS, It was and is the intent of the Legislature that Committee Substitute for House Bill No. 104 be applied prospectively only and that any person now holding any paid public office authorized by Civil Service Commission regulation, including a member
of a local school board or a local municipal council, need not resign his paid public office or terminate his employment with the state classified system; and

WHEREAS, It is the expressed legislative finding and intent that Committee Substitute for House Bill No. 104 apply prospectively only and have no retroactive effect on any person included in the classified service holding any paid public office on May 31, 1983, the effective date of its passage; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature finds and directs the West Virginia Civil Service Commission and all state agencies of state government as employers of any person under the state classified civil service system to apply Committee Substitute for House Bill No. 104 prospectively and not retroactively; and, be it

Further Resolved, That the Legislature directs that all such employers not require any person included in the classified service holding any paid public office to resign or otherwise terminate his public service office as a result of the passage of Committee Substitute for House Bill No. 104; and, be it

Further Resolved, That the Legislature further directs the Joint Committee on Government and Finance to study the issue of whether state classified employees should be permitted to hold certain public offices, i.e., members of local school boards and local municipal councils or other paid public offices, while at the same time being a state classified employee and to make its findings and recommendations, if any, to the Legislature prior to the first day of the 1984 legislative session.

SENATE CONCURRENT RESOLUTION NO. 7
(By Mr. McGraw, Mr. President)

[Adopted August 17, 1983]
Memorializing the President and the Congress of the United States to enact legislation that will preserve the rights of disabled persons who have been wrongfully terminated from Social Security disability benefits.

WHEREAS, Social Security disability insurance benefits have been
terminated to several thousand residents of West Virginia since 1981, even though most of those recipients continue to suffer totally disabling impairments; and

WHEREAS, Appeals to administrative courts are costly, time consuming and emotionally burdensome and compound the original disability, though the majority of cases end favorably for the recipient, overturning the initial wrongful termination of benefits; and

WHEREAS, Various federal courts have ruled that medical improvement should be a guiding factor in disability determinations, and that ruling has led to the high reversal rate and greater justice for recipients by administrative law judges; and

WHEREAS, The Legislature of West Virginia, through its Joint Committee on Government and Finance, has considered the problem to be of such severity as to investigate the state disability determination program and has held public hearings to gather evidence and disclose the serious problems with the current system; and

WHEREAS, The Governor of West Virginia has issued an executive order directing the state disability determination program to use the standards of federal court decisions most favorable to beneficiaries in all future determinations of disability; and

WHEREAS, The Governor of West Virginia has requested authority and funds from the Social Security Administration to review all cases of benefits terminated in the six-month period ending August 12, 1983, and to apply the criterion of medical improvement to such cases; and

WHEREAS, The Governor of West Virginia also has requested authority and funds from the Social Security Administration for face-to-face interviews between the beneficiary and disability determiner prior to any decision to terminate benefits; and

WHEREAS, Legislation has been introduced in Congress to address the problems in the current system, primarily by requiring proof of medical improvement before benefits may be terminated; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States be requested to enact
legislation that will ensure the rights of disabled persons who have been wrongfully denied Social Security disability benefits; and, be it

   Further Resolved, That copies of this resolution be transmitted to the President of the United States, the presiding officer of each House of Congress and the members thereof from the State of West Virginia, and the Secretary of Health and Human Services.

   SENATE CONCURRENT RESOLUTION NO. 8
   (By Mrs. Spears, Mr. Tucker, Mr. Tomblin and Mr. Wright)

   [Adopted August 17, 1983]

   Requesting the Governor to declare an “All Emergency Services Day” recognizing the men and women of this State who serve on emergency squads, fire departments and as mobile intensive care paramedics.

   WHEREAS, Maintenance of emergency ambulance, medical, fire and rescue services for the entire State is necessary to promote the health and welfare of the citizens and residents of this State; and

   WHEREAS, The aforementioned needs are being effectively met by the men and women serving on emergency ambulance squads, fire departments and as mobile intensive care paramedics; and

   WHEREAS, In providing these essential services, these men and women train endlessly, enduring long hours and brave dangerous conditions while receiving scant recognition for their performance; and

   WHEREAS, The skills and esprit of these men and women reflect great credit upon themselves and the State of West Virginia; therefore, be it

   Resolved by the Legislature of West Virginia:

   That the Governor is requested to proclaim an “All Emergency Services Day” in order to pay tribute to those West Virginians who provide essential emergency services to the citizens and residents of this State; and, be it

   Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Governor.
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, 1983

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